

Misdemeanor/Felony Criminal

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Appendix

Criminal Penalties/Administrative Sanctions

5.1 Overview

A. Authority and Definitions

1. Felony Cases

a. Definition

A **felony** means a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year, or an offense expressly designated by law to be a felony.

b. Authority

A district court magistrate may conduct the first appearance of a defendant before the court in all criminal cases, but this section shall not authorize any district court magistrate to accept a plea of guilty or nolo contendere not expressly authorized pursuant to section 8511. [MCL 600.8513(1)]

2. Misdemeanor Cases

a. Definition of Misdemeanor

A **misdemeanor** means a violation of a penal law of this state which is not a felony, or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or by a fine that is not a civil fine. [MCL 761.1(h)]

It is a misdemeanor for a person to violate the motor vehicle act, unless that violation is by this act or other law of the state declared to be a felony or a civil infraction. Unless another penalty is provided in this act or by the laws of this state, a person convicted of a misdemeanor for the violation of this act shall be punished by a fine of not more than \$100.00, or by imprisonment for not more than 90 days, or both. [MCL 257.901(1)]

When any act or omission, not a felony, is punishable according to law, by a fine, penalty or forfeiture, and imprisonment, or by such fine, penalty or forfeiture, or imprisonment, in the discretion of the court, such act or omission shall be deemed a misdemeanor. [MCL 750.8]

When the performance of any act is prohibited by this or any other statute, and no penalty for the violation of such statute is imposed, either the same section containing such prohibition, or in any other section or statute, the doing of such act shall be deemed a misdemeanor. [MCL 750.9]

b. Definition of Ordinance Violation

An **ordinance violation** means a violation of an ordinance or charter of a city, village, township or county or a violation of an ordinance, rule, or regulation of any other governmental entity authorized by law to enact ordinances, rules, or regulations punishable by imprisonment or by a fine that is not a civil fine.

c. Definitions of Minor Offense

A **minor offense** means a misdemeanor or ordinance violation for the which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$1,000.00.

d. Authority

1) Non-Traffic

A district court magistrate has the jurisdiction and authority to arraign and sentence upon pleas of guilty or nolo contendere for violations of the acts or parts of acts in: 1) MCL 600.8511(a), or a local ordinance substantially corresponding to those acts or parts of acts, when authorized by the chief judge of the district court and if the maximum permissible punishment does not exceed 90 days in jail or a fine, or both; or 2) MCL 600.8511(c), or a local ordinance substantially corresponding to those acts or parts of acts, when authorized by the chief judge of the district court and if the maximum permissible punishment does not exceed 93 days in jail or a fine, or both. [MCL 600.8511(a)]

2) Traffic

A district court magistrate has the authority to arraign defendants, accept guilty and no contest pleas, and to impose sentence under the Michigan Vehicle Code except for drunk driving or impaired driving under MCL 257.625 and MCL 257.625m or a substantially corresponding local ordinance. [MCL 600.8511(b)] The magistrate may accept a plea and impose sentence in a misdemeanor case arising under the Michigan Vehicle Code or a similar local ordinance only if:

- the misdemeanor penalty does not exceed 93 days in jail and/or a fine;
- the defendant pleads guilty or no contest; and
- the offense is not drunk driving or impaired driving governed by MCL 257.625 and MCL 257.625m or a substantially corresponding local ordinance.

An arraignment in a misdemeanor traffic case may be conducted by a district court magistrate as authorized by statute and by the judges of the district. [MCR 6.615(C)(2)]

The district judge assumes jurisdiction over misdemeanor cases not meeting the foregoing criteria. In drunk driving and impaired driving cases, the magistrate may arraign and set bond.

B. Sources of Misdemeanor Law

In adjudicating a misdemeanor case, the magistrate must first make sure that the violation in question is a criminal misdemeanor over which he or she has jurisdiction. Next, the magistrate must determine the proper procedural steps to take in processing the case after the officer or prosecuting official issues the citation/complaint and warrant. Ultimately, the magistrate must decide whether the defendant's conduct is in violation of state law or a local ordinance, and impose the proper penalty. In making all of these decisions, the magistrate must consult Michigan's criminal law.

Michigan criminal law should be available in the court's library. Finding Michigan's criminal law can be confusing for the following reasons:

- Both the state Legislature and local governments enact criminal laws so there is no single official compilation of statutes and ordinances that contains all of Michigan's criminal law. An offender may be cited under state or local law, depending on where the offense occurred and what law enforcement agency took action.
- The Legislature has not put all of its enactments on traffic matters into one place. Michigan legislation is organized by broad topical categories, and statutes involving motor vehicles are scattered throughout these categories. Thus, even though the "Motor Vehicle Code" contains most of the "rules of the road," the "Penal Code" contains certain additional serious felonies involving vehicles.

- To some extent, laws describing the elements of Michigan's crimes and offenses are compiled separately from the laws describing the procedure for adjudicating the cases. In some cases, one statute may describe an offense, and a second statute may describe the penalty for that offense.

Because Michigan criminal law is not located all in one place, the magistrate must consult multiple sources of law in adjudicating a misdemeanor case. The most common sources of law are:

1. Michigan Compiled Laws (MCL)

The Michigan Compiled Laws is a compilation of all the statutes enacted by the Michigan legislature including references to relevant appellate case decisions.

2. Local Ordinances

Local ordinances are a type of law enacted by a local unit of government, such as a city or township identical to, or substantially similar to, statutes enacted by the Legislature.

Local ordinances must be consistent with the Michigan Vehicle Code (MVC). Under Michigan law, local ordinances may not provide for lesser penalties than found in the MVC. Also, ordinances may not conflict with the offenses found in chapters 6 or 8 of the MVC. If an ordinance provides for a criminal penalty for an act or omission that is a civil infraction under the MVC, the penalty in excess of that prescribed is void to the extent of the conflict. Therefore, many local governments adopt the MVC "by reference," that is, they enact a set of ordinances identical to the MVC. In addition, local governments may, and do, enact ordinances governing specific areas. Areas that local governments are allowed to regulate include the following: 1) parking; 2) speed regulations; 3) traffic signals; 4) one-way streets; 5) stop or yield signs; 6) turns; 7) use of highways (e.g., restriction to certain vehicles, regulating parades, etc.); and 8) bicycles.

Magistrates should familiarize themselves with the applicable local ordinances in their jurisdiction because no two sets of local ordinances are exactly the same in format, organization, or numbering system. Ordinance compilations may be obtained from local sources such as courts, public libraries, and city, county, village and township clerks' offices.

Copies of the Uniform Traffic Code are available from the Michigan Department of State Police. Many localities have adopted a model set of traffic ordinances called the Uniform Traffic Code for Cities, Townships and Villages. The Uniform Traffic Code was prepared by the Michigan Department of State Police in the early 1980s and has not been updated.

3. Michigan Vehicle Code

A collection of excerpts from the MCL that can be obtained for a nominal fee from the Michigan Secretary of State. It is a single unannotated volume containing the Michigan Vehicle Code found in Chapter 257 of the MCL, plus all the other MCL provisions relating to use and ownership of vehicles. This compilation is updated annually.

4. Michigan Court Rules

The Michigan Court Rules are adopted by the Michigan Supreme Court and set forth procedural requirements for the Michigan courts. The magistrate should consult the following court rules governing criminal procedures, the powers of the magistrate, and recordkeeping requirements for the magistrate.

- MCR 4.401, which deals with the district judge's control over the magistrate's duties, responsibilities, and decisions;
- MCR 6.001 through 6.004, 6.101 through 6.106, and 6.125 which sets forth arraignment procedures for criminal cases involving adults;
- MCR 6.427 which deals with judgment;
- MCR 6.610 through 6.620 which sets forth procedures to be followed in misdemeanor cases; and
- MCR 6.901 through 6.909 which sets forth arraignment procedures for criminal cases involving juveniles.
- MCR 8.119, which imposes recordkeeping and reporting requirements on magistrates.

While the general criminal rules used in circuit court may be useful and may even increase the efficient processing of cases, they are specifically **not authorized** for use in the district court. **The magistrate should follow the criminal procedure authorized for district court.**

5. Published Case Decisions

In published case decisions, the Michigan Supreme Court and Court of Appeals resolve questions not directly addressed by the foregoing statutes, ordinances, and court rules. Michigan Supreme Court decisions are collected in reporters called the Michigan Reports.

Court of Appeals decisions appear in reporters called Michigan Appeals Reports. All Michigan trial courts are required to follow published case decisions by the state's appellate courts.

The Michigan Supreme Court publishes all of its decisions. The Court of Appeals, however, only publishes selected decisions. Michigan's trial courts are only required to follow published decisions by the Court of Appeals. Unpublished Court of Appeals opinions may be considered, but are not binding. [MCR 7.215(C)]

Michigan court decisions are published in a parallel reporter from West Publishing Company, called Northwestern Reporter. When used, the parallel citation always follows the official Michigan Reports or Michigan Appeals Reports citation.

6. Attorney General Opinions

Occasionally, the Michigan Attorney General issues opinions about legal issues that magistrates might encounter. The courts are not required to follow these opinions, but they typically offer helpful guidance. Attorney General opinions are found in a multi-volume set called Report of the Attorney General. Each volume in the set contains opinions issued during a one or two year period.

7. Michigan Penal Code

When any act or omission, not a felony, is punishable according to law, by a fine, penalty or forfeiture, and imprisonment, or by such fine, penalty or forfeiture, or imprisonment, in the discretion of the court, such act or omission shall be deemed a misdemeanor. [MCL 750.8]

When the performance of any act is prohibited by this or any other statute, and no penalty for the violation of such statute is imposed, either the same section containing such prohibition, or in any other section or statute, the doing of such act shall be deemed a misdemeanor. [MCL 750.9]

C. Extradition and Governor's Warrant

1. Extradition

Extradition is the surrender by one state or country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which demands its surrender.

Michigan has adopted the Uniform Criminal Extradition Act. See MCL 780.1, et. seq. Article IV, Section 2 of the US Constitution provides for the right of one state to demand the surrender of a fugitive from justice from another state when the fugitive is found in the other state.

2. Governor's Warrant

When the governor of Michigan receives a demand for the delivery of a person charged with treason, a felony or any other claim along with a copy of the indictment or information, affidavit or complaint, which has been duly certified as authentic by the governor or chief magistrate of the state from which the person has fled, the governor of Michigan shall sign a warrant of arrest, sealed with the state seal, directed to any peace officer. The warrant must substantially recite the facts necessary to validate its issuance. The governor of Michigan has the duty to order the sheriff of the county in which the person has been found to deliver him to the authorized agent for removal for prosecution.

3. Procedure

The defendant may have a judicial examination if he desires, to ascertain whether the demand and arrest conform to law. [MCL 776.7, MCL 780.9]

Upon arrest the person must be taken before a judge of a court of record who shall inform him of the demand for his surrender, and of the crime with which he is charged. If the defendant or his attorney wishes to test the legality of his arrest the defendant shall be allowed reasonable time to apply for a writ of habeas corpus. Notice of such writ shall be given to the prosecutor of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state. [MCL 780.9]

Any court or magistrate authorized to issue warrants in criminal cases may, upon complaint under oath, issue a warrant to bring the person before that court or some other court to answer the complaint. [MCL 776.9] Once a Governor's warrant has issued, a magistrate may not perform the arraignment. MCL 780.9 requires the hearing to be held by a judge of a court of record. The judge must order the defendant to be held without bond on a Governor's warrant. [*In Re Ford*, 197 Mich App 452, 468 NW2d 260 (1991)] (See forms MC 270 and MC 271 in Section 5.4, page 69)

Upon an examination of the person charged, and if there is reasonable cause to believe the complaint is true, bail is allowable except when charged with a capitol crime or first degree murder, in a reasonable sum, with sufficient sureties, to appear at a later date. [MCL 766.10] See also Article 1, section 15 of the Michigan constitution for additional bail limitations.

5.2.1 Commencing a Case

A. Methods

1. Michigan Uniform Law Citation

The Michigan Uniform Law Citation (UC-01a) consists of 6 parts: 3 originals (court copies); 1 police copy; 1 misdemeanor copy; and 1 civil infraction copy. The 3 originals allow an officer to cite three violations on a single form. For each violation, the officer must file an “original” with the court. Each of the originals shows the court the other violations written; however, the other violations will be shaded to indicate that they are not the charge for this particular “original”. Filing may be electronic under MCR 8.125.

Each “original” copy of the citation filed with the district court serves as a separate complaint. [MCR 6.615(A)(3), MCL 257.727c, MCL 764.9c] The misdemeanor copy given to the defendant is a summons to bring the defendant under court jurisdiction and notifies the defendant of all charges regardless of how many originals are filed.

A Uniform Law Citation may be issued for any offense for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both, except for: a) a person arrested for a violation of section 81 or 81a of the Michigan penal code or a substantially corresponding local ordinance, if the victim of the assault is the offender’s spouse, former spouse, an individual who has had a child in common with the offender, or an individual residing or having resided in the same household as the offender; b) a person subject to detainment for violating a personal protection order; or c) a person subject to a mandatory period of confinement, condition of bond, or other condition of release until he or she has served that period of confinement or meets that requirement of bond or other condition of release. [MCL 764.9c]

2. Complaint and Warrant

The Complaint and Warrant (SCAO Approved form DC 225) consists of 2 parts: the complaint, of which there are 3 copies and the warrant, of which there is 1 copy. SCAO Approved form DC 226 is used only when a misdemeanor case has been initiated by the Michigan Uniform Law Citation and the defendant fails to appear. See subchapter 5.2.10, page 63.

B. Felony

A felony case may be begun by the filing of a sworn complaint in the district court and the issuance of an arrest warrant. [SCAO Approved form MC 200] The Felony Set consists of 4 parts: the complaint, of which there are 3 copies; the warrant, of which there is 1 copy; the information, of which there is 1 copy; and the bindover, of which there is 1 copy. **A felony case may not be begun on a Uniform Law Citation.** Whenever a felony charge is listed and noted as “Authorization Pending” on a Uniform Law Citation, the court should not open a case until receipt of an authorized complaint and warrant.

C. Misdemeanor Non-Traffic and Traffic

A misdemeanor case may be begun by one of the following procedures:

- Service by a law enforcement officer on the defendant of a written citation, and the filing of the citation in the district court. Michigan Uniform Law Citation (form UC-01a).
- The filing of a sworn complaint in the district court and the issuance of an arrest warrant. [SCAO Approved form DC 225 or DC 226] A citation may serve as the sworn complaint and as the basis for a misdemeanor warrant.
- Other special procedures authorized by statute.

The citation serves as a summons to command the initial appearance of the defendant and a response from the defendant as to his or her guilty of the violation alleged. A single citation may not allege both a misdemeanor and a civil infraction. [MCR 6.615(A)]

In a contested case, if the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper. A citation that is not signed and filed on paper, when required by the court, will be dismissed with prejudice. [MCR 6.615(D), MCR 8.125]

D. Venue

1. First Class District

In a district of the first class, venue for criminal actions is the county where the violation took place. [MCL 600.8312(1)] A district of the first class is defined as a district consisting of one or more counties, in which each county is responsible for maintaining, financing, and operating the district court within its respective county. [MCL 600.8103(1)]

2. Second Class District

In a district of the second class, venue for criminal actions is in the district where the violation took place. [MCL 600.8312(2)] A district of the second class is defined as a district consisting of a group of political subdivisions within a county, in which the county is responsible for maintaining, financing, and operating the district court. [MCL 600.8103(2)]

3. Third Class District

In a district of the third class, venue for criminal actions is in the political subdivision where the violation took place, except that when the violation occurs in a political subdivision where the court is not required to sit, venue is proper in any political division where the court is required to sit. [MCL 600.8312(3)] A district of the third class is defined as a district consisting of 1 or more political subdivisions within a county, in which each political subdivision is responsible for maintaining, financing, and operating the district court within its political subdivision. [MCL 600.8103(3); MSA 27A.8103(3)]

5.2.2 Felony and Misdemeanor Arraignment

A. Right to Arraignment

After the defendant has been arrested and/or charged with a criminal offense over which the district court has jurisdiction, he or she must be brought before the court for arraignment where the court formally informs the defendant of the charges against him/her and advises him/her of certain legal rights. [MCR 6.610(D)]

The defendant charged with a criminal misdemeanor offense must be personally arraigned, or be arraigned and enter a plea by mail. [MCR 6.610(D) and (E)(6)(a)]

In People v Thomason, 173 Mich App 812 (1988), the Court of Appeals ruled that a district court arraignment must be held or waived in all cases in which the defendant is charged with a felony. Presumably, this same fundamental right to be informed of the nature of the charge also applies to misdemeanor cases.

B. Arraignment Locations

1. Arrest Without Warrant

a. Misdemeanor

Except for a few specified offenses, a police officer may arrest a person without a warrant for a misdemeanor only when the misdemeanor was committed in the officer's presence. [MCL 764.15(1)(a)] Therefore, arraignment location for a misdemeanor arrest without a warrant will almost always be the district where the offense occurred. The two most important exceptions to the arrest warrant requirement for misdemeanors are: 1) alcohol driving offences in a vehicle, snowmobile, ORV, or marine vessel; and 2) domestic assault. [MCL 764.15(1)(h)-(m) and MCL 764.15a;]

A peace officer who has arrested a person for an offense without a warrant shall without unnecessary delay take the person arrested before a magistrate of the judicial district in which the offense is charged to have been committed, and shall present to the magistrate a complaint stating the charge against the person arrested. [MCL 764.13, MCR 6.104(A)]

A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe the person has violated a condition of probation imposed by a court. [MCL 764.15(g)]

b. Felony

Court rule states that an accused arrested without a warrant must be taken to a court in the judicial district in which the offense allegedly occurred. If the arrest occurs outside the county in which these courts are located, the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for arraignment in accordance with the provisions of this rule. If prompt transportation cannot be arranged, the accused must be taken without unnecessary delay before the nearest available court for preliminary appearance in accordance with subrule (C). [MCR 6.104(B)]

When, under subrule (B), an accused is taken before a court outside the county of the alleged offense, the court must advise the accused of the rights specified in subrule (E)(2) and determine what form of pretrial release, if any, is appropriate. To be released, the accused must submit a recognizance for appearance within the next 14 days before a court specified in the arrest warrant. The court must certify the recognizance and have it delivered or sent without delay to the appropriate court. If the accused is not released, the arresting agency must arrange prompt transportation to the judicial district of the offense. In all cases, the arraignment is then to continue under subrule (D), if applicable, and subrule (E) either in the judicial district of the alleged offense or in such court as otherwise is designated. [MCR 6.104(C)]

2. Arrest With Warrant

MCL 764.1b provides that if the arrest is with a warrant, then the police shall “without unnecessary delay” take the arrested person for arraignment in the judicial district where the offense was committed.

a. Misdemeanor - Arrest Outside County

MCL 764.4-764.7 are the statutory sections dealing with arrests with warrants that occur outside the county of the alleged offense. These statutes state as follows:

- If a person is arrested pursuant to a warrant which charges an offense other than an offense for which bail may be denied, if the arrest is made in a county other than that in which the offense is charged to have been committed, and if the person arrested requests that he or she be brought before a magistrate of the judicial district in which the arrest was made, the person arrested shall be taken before a magistrate of that judicial district and shall be dealt with as provided in subchapter 5.2. [MCL 764.4]

- The magistrate may take from the person arrested, a recognizance with sufficient sureties, for the person's appearance within 10 days before a magistrate of the judicial district in which the offense is charged to have been committed. [MCL 764.5]
- The magistrate shall certify on the recognizance the fact of having let the defendant post bail and shall deliver the recognizance taken to the person who made the arrest, who shall cause the recognizance to be delivered without unnecessary delay to a magistrate or clerk of the court in the judicial district before which the accused is recognized to appear. [MCL 764.6]
- If the magistrate refuses to allow the arrested person to post bail, or if sufficient bail is not offered, the official having charge of the arrested person shall take the arrested person before a magistrate of the judicial district in which the offense is charged to have been committed. [MCL 764.7]

b. Felony - Arrest Outside County

MCR 6.104 provides for arrests with warrants that occur outside the county of the alleged offense. The court rule states as follows:

- An accused arrested pursuant to a warrant must be taken to a court specified in the warrant. If the arrest occurs outside the county in which these courts are located, the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for arraignment in accordance with the provisions of this rule. If prompt transportation cannot be arranged, the accused must be taken without unnecessary delay before the nearest available court for preliminary appearance in accordance with subrule (C). [MCR 6.104(B)]

The Staff Comment to MCR 6.104(B) states that this subrule modifies statutory requirements, because the court rule specifies that the accused shall be taken before "a court specified in the warrant." The statute, by comparison, states that the accused shall be taken "before a magistrate of the judicial district in which the offense is charged to have been committed." [MCL 764.1b] The Staff Comment explains that the purpose for this changed procedure is to "accommodate the requirements for prompt arraignments, including weekends, by allowing specification in the warrant of another court, such as the one shared by the judicial districts for the purpose of conducting weekend or nonbusiness-hour arraignments."

- When, under subrule (B), an accused is taken before a court outside the county of the alleged offense, the court must advise the accused of the rights specified in subrule (E)(2) and determine what form of pretrial release, if any, is appropriate. To be released, the accused must submit a recognizance for appearance within the next 14 days before either a court in the judicial district in which the offense allegedly occurred or some other court designated by that court. The court must certify the recognizance and have it delivered or sent without delay to the appropriate court. If the accused is not released, the arresting agency must arrange prompt transportation to the judicial district of the offense. In all cases, the arraignment is then to continue under subrule (D), if applicable, and subrule (E) either in the judicial district of the alleged offense or in such court as otherwise is designated. [MCR 6.104(C)]

C. Time Requirements for Arraignments

1. Arrest Without Warrant

A person arrested without a warrant must be taken “without unnecessary delay” to the most convenient magistrate of the county where the offense was committed. [MCL 764.13 and Leisure v Hicks, 336 Mich 148 (1953)]

The test of prejudice from delay prior to arraignment is whether the delay gives the opportunity for the extraction of a confession. [People v Bohm, 49 Mich App 244 (1973)]

The failure to arraign defendant, who had been arrested Friday, on Saturday night or Sunday was inexcusable, even when allowing a reasonable time to investigate defendant’s statements, when defendant was questioned on Friday and Saturday. [People v Besonen, 4 Mich App 131 (1966)]

a. Felony - Court Rule

The felony rule for arraignments, MCR 6.104(A), states that unless released beforehand, an arrested person must be taken for arraignment without unnecessary delay. MCR 6.104(G) requires the court, in felony cases, to make a judicial officer available for arraignments each day of the year or to make a judicial officer available each day of the year for setting bail. See also MCR 6.907(A) as appropriate.

b. Misdemeanor - Court Rule

Michigan Court Rule does not prescribe the time of arraignment for misdemeanors.

2. Arrest With Warrant

MCL 764.1b provides that if the arrest is with a warrant, then the police shall “without unnecessary delay” take the arrested person for arraignment.

a. Felony - Court Rule

MCR 6.104(B) provides that the place of arraignment for a defendant arrested with a warrant shall be the “court specified in the warrant.”

b. Misdemeanor - Court Rule

Michigan Court Rule does not prescribe the time of arraignment for misdemeanors.

3. Plans for Judicial Availability in Felony Cases

MCR 6.104(G) now requires that arraignments in all felony cases must be held within one day of arrest. Because MCR 6.104(G) has not been made applicable to misdemeanor cases, individual district courts must decide whether to apply this standard to misdemeanor cases. The statutory provision requiring a person to be arraigned without unnecessary delay is, of course, applicable to misdemeanor cases. MCL 764.1b.

MCR 6.104(G) states that in each county, the court with trial jurisdiction over felony cases adopt and file with the State Court Administrator a plan for judicial availability. The plan shall:

- a. make a judicial officer available for arraignments each day of the year, or
- b. make a judicial officer available for setting bail for every person arrested for the commission of a felony each day of the year conditioned upon
 - 1) the judicial officer being presented a proper complaint and finding probable cause pursuant to MCR 6.102(A), and
 - 2) the judicial officer being available to set bail.

This plan must provide that the judicial officer shall order the arresting officials to arrange prompt transportation of any accused unable to post bond to the judicial district of the offense for the arraignment not later than the next regular business day.

D. Arraignment

1. Felony

The magistrate must comply with the arraignment procedures outlined in MCR 6.104(E) and 6.610(G), and 6.907 and 6.909 as appropriate.

a. MCR 6.104(E) requires the magistrate to:

- 1) Inform the accused of the nature of the offense charged, and its maximum possible prison sentence and any mandatory minimum sentence required by law.
- 2) If the accused is not represented by a lawyer at the arraignment, advise the accused that
 - the accused has a right to remain silent;
 - anything the accused says orally or in writing can be used against the accused in court;
 - the accused has a right to have a lawyer present during any questioning consented to; and
 - if the accused does not have the money to hire a lawyer, the court will appoint a lawyer for the accused (see subchapter 5.2.3 for details on appoint attorney).
- 3) Advise the accused of the right to a lawyer at all subsequent court proceedings and, if appropriate appoint a lawyer;
- 4) Set a date within the next 14 days for the accused's preliminary examination and inform the accused of the date.
- 5) Determine what form of pretrial release, if any, is appropriate.
- 6) Ensure that the accused has been fingerprinted as required by law.

The court may not question the accused about the alleged offense or request that the accused enter a plea.

b. MCR 6.610(G) requires the magistrate to:

- Read the complaint or warrant into the record; and
- Inform the defendant of the right to a preliminary examination; the right to an attorney, if the defendant is not represented by an attorney at the arraignment; the right to have an attorney appointed at public expense if the defendant is indigent; and the right to be released on bond.

If a defendant not represented by an attorney waives the preliminary examination, the magistrate shall ascertain that the waiver is freely, understandingly, and voluntarily given before accepting it. Magistrates do not have statutory authority to bind a defendant over to the circuit court, and therefore, should seek direction from the chief district judge on procedure should a defendant indicate at arraignment a desire to waive preliminary examination.

2. Misdemeanor

Misdemeanors are criminal offenses subject to procedural safeguards that are not available for civil infractions. If the defendant appears on the date provided in the citation or the defendant is brought in on a warrant, the magistrate must arraign the defendant according to the general criminal court rules for district court offenses. Arraignment procedures are outlined in MCR 6.610(D). Whenever a defendant is arraigned on an offense over which the district court has jurisdiction, he or she must be informed of the following:

The magistrate must inform the defendant of the following:

- a. the name of the offense;
- b. the maximum sentence permitted by law;
- c. the defendant's right
 - to the assistance of an attorney and to a trial;
 - to an appointed attorney if the defendant is indigent under MCR 6.610(D)(2) (see subchapter 5.2.3 for information on appointing attorney);
 - to a trial by jury unless the defendant is charged under an ordinance that does not correspond to a criminal statute or permit a jail sentence.

The information may be given in a writing that is made a part of the file or by the court on the record (SCAO Approved form DC 213). [MCR 6.610(D)(1), MCL 770.3]

In May 1992, the Supreme Court resolved a Court of Appeals conflict regarding the use of prior guilty pleas to enhance a subsequent offense. The Supreme Court held that a defendant may collaterally attack the validity of a prior guilty plea only if the plea was taken in violation of defendant's right to counsel as mandated by Gideon v Wainwright, 372 US 335 (1963). [People v Ingram, 439 Mich 288 (1992)]

In June 1997, the Court of Appeals ruled that MCR 6.610(E)(2) regarding enhancement of subsequent charges or sentences to be invalid and no longer relating to any practice or procedure supported by caselaw or constitutional right when incarceration was not imposed for the previous conviction unless the defendant was represented by an attorney on the previous case. [People v Reichenback, 224 Mich App 186 (1997)]

E. Bail Requirement

Bail must be set for all persons charged with misdemeanors. [Michigan Constitution 1963, Art 1, Sec. 15. [MCR 6.106(A)] The court must order the pretrial release of the defendant on personal recognizance, on conditional release, or on money bail. [MCR 6.106(C)-(E)]. See Section 4 for details on bail/bond. See also MCR 6.909.

F. Record Requirement at Arraignment

All proceedings in the district court shall be recorded by the district court recorder by the use of recording devices approved by the State Court Administrator, or taken by the district court reporter. [MCL 600.8611]

1. Felony

A verbatim record must be made of the arraignment. [MCR 6.104(F)]

2. Misdemeanor

Unless a writing is permitted, a verbatim record of the proceedings before a court under MCR 6.610(D) through (F) must be made. [MCR 6.610(C)]

Many of the magistrate's actions in misdemeanor traffic cases are generally conducted off the record, including many arraignments where a written Advice of Rights (SCAO Approved form DC 213) is provided and a plea of mute or not guilty is entered. However, it is advisable to conduct an arraignment on the record if the alleged traffic offense is one in which the magistrate has the authority to sentence. Then, if the magistrate takes a plea of guilty, the proceedings do not have to be stopped to begin the record.

G. Victim's Rights at Arraignment

The Crime Victim's Rights Act, MCL 780.751-834, provides for the anonymity of crime victims in specified circumstances and also requires the prosecutor's office to provide the crime victim(s) with certain services and information regarding the progress of the criminal case against the defendant.

The Act is divided into 3 articles: Article 1 (§ 751-775) deals with victims of felonies and circuit court misdemeanors; Article 2 (§ 781-802) deals with the rights of victim's of juvenile crimes; and Article 3 (§ 811-834) deals with victims of "serious misdemeanors. Although this Act only addresses post arraignment court proceedings, some sections from Article 3 that the court should be aware of are cited below:

"Serious" misdemeanors are defined as: assault and battery, aggravated assault, illegal entry, enticing a child for immoral purposes, discharge of a firearm intentionally aimed at a person, discharge of an intentionally aimed firearm resulting in injury, and leaving the scene of a personal injury accident.

MCL 780.811(a) requires the court to notify the prosecutor if a defendant enters a plea of guilty or no contest at arraignment.

If a plea of guilty or nolo contendere is accepted by the court at the time of the arraignment of the defendant for a serious misdemeanor, the court shall notify the prosecuting attorney of the plea and the date of sentencing within 48 hours after the arraignment. If no guilty or nolo contendere plea is accepted at the arraignment and further proceedings will be scheduled, the court shall also notify the prosecuting attorney within 48 hours after the arraignment. A notice to the prosecuting attorney under this subsection shall include the name, address, and phone number of the victim. [MCL 780.816(1)]

MCL 780.812 states that a law enforcement officer investigating a serious misdemeanor involving a victim shall include with the complaint, appearance ticket, or traffic citation filed with the court a separate written statement including the name, address, and phone number of each victim. This separate statement shall not be a matter of public record.

Under MCL 780.830, a victim's address and telephone number maintained by a court or sheriff pursuant to this article is exempt from disclosure under the freedom of information act.

5.2.3 Court Appointed Attorney

A. Authority

At the arraignment on the warrant or complaint, the court must advise the defendant of the right to a court appointed attorney at all subsequent court proceedings if s/he wants one and is unable to pay for one. [MCL 775.16, MCR 6.005(A), MCR 6.104(E), MCR 6.610(D)]

If authorized by the chief judge, a district court magistrate may approve and grant petitions for the appointment of an attorney to represent an indigent defendant accused of any misdemeanor or ordinance violation punishable by not more than 1 year in jail. [MCL 600.8513(2)(a)]

This statute indicates that, **although magistrates may appoint counsel in misdemeanor cases, they cannot do so in felony cases.** The practice in some courts is to have magistrates make a recommendation for the appointment of counsel at the felony arraignment, and have the circuit judge sign an order appointing counsel before the preliminary examination.

B. Joint Representation - Multiple Defendants

There is no provision in the court rules regarding the procedure to follow when two defendants are jointly charged with the same misdemeanor, or when their cases are otherwise joined. However, the following rules, applicable to the appointment of counsel for felony cases, may also serve as guidance for similar misdemeanor situations.

MCR 6.005(F) states that “when 2 or more *indigent defendants* are jointly charged with an offense or offenses or their cases are otherwise joined, the court must appoint separate lawyers unassociated in the practice of law for each defendant.” (Emphasis added).

Under MCR 6.005(F)(1)-(3), whenever two or more defendants, who have been jointly charged or whose cases have been otherwise joined, are represented by the same retained lawyer or lawyers associated in the practice of law, the court must inquire into the potential for a conflict of interest that might jeopardize the right of each defendant to the undivided loyalty of the lawyer. The court may not permit the joint representation unless:

1. the lawyer or lawyers state on the record the reasons for believing that joint representation in all probability will not cause a conflict of interests;
2. the defendants state on open record after the court’s inquiry and the lawyer’s statement, that they desire to proceed with the same lawyer; and

3. the court finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding.

If, in a case of joint representation, a conflict of interest arises at any time, including trial, the lawyer must immediately inform the court. If the court agrees that a conflict has arisen, it must afford one or more of the defendants the opportunity to retain separate lawyers. The court should on its own initiative inquire into any potential conflict that becomes apparent, and take such action as the interests of justice require. MCR 6.005(G).

C. When Entitled

People v Bailey, 7 Mich App 157 (1967) held that the right to an attorney attaches not only to the trial, but to the guilty plea proceeding itself. Defendant should, therefore, specifically waive his right to have an attorney at both the trial and guilty plea proceedings.

The defendant may waive his or her right to counsel but not until the court advises the defendant of the charge, the maximum possible prison sentence, and any mandatory minimum sentence, as well as the risks of self representation. The defendant must also be given the opportunity to consult with a lawyer before executing a waiver of the right to counsel. [MCR 6.005(D)]

1. Felony Cases

Even if a defendant waives the assistance of an attorney, the record of each subsequent proceeding (such as the preliminary examination, arraignment, revocation proceedings, hearings, trial, or sentencing) must affirmatively show that the court advised the defendant of the right to an attorney and that the defendant waived that right. Before the court begins such proceedings, the defendant must reaffirm that an attorney is not wanted, or if the defendant requests an attorney and is unable to pay for one, the court must appoint one, or if the defendant wants to hire an attorney and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one. [MCR 6.005(E)]

At the arraignment on the warrant or complaint, the court must advise the defendant of the right to a court appointed attorney if s/he does not have the money to hire one. The court must also advise the defendant of the right to an attorney at all subsequent court proceedings, and if appropriate, appoint one. [MCR 6.104(E) and MCR 6.610(G)]

2. Misdemeanor Cases

- a. At the arraignment on the warrant or complaint, the court must advise the defendant of the right to a court appointed attorney if s/he does not have the money to hire one and if:

- 1) the offense charged is punishable by more than 93 days in jail;
- 2) the offense charged requires a minimum term in jail; or
- 3) the court determines that it might sentence the defendant to jail.

[MCR 6.610(D) and (E), Mich Sup Ct AO 1972-4]

- b. If an indigent defendant is without an attorney and has not waived the right to an appointed attorney, the court may not sentence the defendant to jail. [MCR 6.610(D)(2)]
- c. MCR 6.610(E)(2)(c) states that a subsequent charge or sentence may not be enhanced because of a conviction unless defendant is represented by an attorney, or defendant waives the right to an appointed attorney. However, in People v Reichenback, the Court of Appeals ruled that MCR 6.610(E)(2) regarding enhancement of subsequent charges or sentences to be invalid and no longer relating to any practice or procedure supported by caselaw or constitutional right when incarceration was not imposed for the previous conviction unless the defendant was represented by an attorney on the previous case. [People v Reichenback, 224 Mich App 186 (1997)]

The most common examples of misdemeanors that may result in enhanced sentences if there are subsequent convictions are the following:

- One prior conviction, punishable up to 1 year, MCL 257.625.
- Driving on a Suspended License, prior conviction, punishable by up to 1 year in jail, MCL 257.904(3)(b).
- Check Without Sufficient Funds Under \$50, 2nd or 3rd offense, punishable up to 6 months or 1 year, MCL 750.131.
- Prostitution, 2nd or 3rd offense, punishable up to 1 year or 2 years, MCL 750.451.
- Possession of Stolen Property Under \$100, 3rd offense, punishable up to 5 years, MCL 750.535.
- Non major Controlled Substance Act Violation, 2nd offense, punishable up to twice the otherwise authorized sentence, MCL 333.7413(2).
- Minor in Possession of Alcohol, MCL 436.1703 and MCL 257.624b.

- Transport/Possess Alcohol in a Motor Vehicle, MCL 257.624a.

D. Application for Indigency

1. Authority

If the defendant requests an attorney and claims financial inability to retain one, the court must determine whether the defendant is indigent. [MCR 6.005(B) and Mich Sup Ct AO 1972-4, People v Studaker, 387 Mich 698; 199 NW2d 177 (1972)] The appointment of counsel must be consistent with an adopted and published plan which governs the process for selecting and appointing attorneys to represent indigent defendants. [MCL 775.16, MCR 6.005(I)]

2. Process

The process for determining indigency in felony cases is MCR 6.005. In misdemeanor cases, it is Mich Sup Ct AO 1972-4. These factors are a guide for determining indigency and are the minimum amount of information necessary to make an informed decision on the question of indigency. Every court shall require a defendant claiming indigency to submit a sworn statement setting forth his or her financial condition. In both felony and misdemeanor cases the defendant shall provide, at a minimum, the following factors:

- present employment, earning capacity and living expenses;
- outstanding debts and liabilities, secured and unsecured;
- whether defendant has qualified for and is receiving any form of public assistance;
- availability of any personal or real property owned and whether it would cause undue financial hardship to the defendant or dependents if converted;
- any other circumstances which would impair the ability to pay an attorney's fee as would ordinarily be required to retain competent counsel.

3. SCAO Approved Forms

The form Petition and Order for Court Appointed Attorney (SCAO Form MC 222) may be completed for appointments through sentencing.

E. Investigation to Determine Indigency

1. Role of Magistrate

In all Michigan courts the final decision to provide counsel for an indigent defendant lies with the judge having jurisdiction in the pending case. In some courts the presiding judge will make a determination of indigency and, based upon information provided, appoint an attorney to represent a defendant. If the court determines that the defendant is financially unable to retain counsel, it must promptly appoint an attorney and notify that attorney of the appointment.

2. Role of Court Staff

Some courts refer a defendant to an investigator who will examine and verify information contained in a petition for a court appointed attorney. A recommendation for or against appointment of counsel is then provided to the judge.

F. Waiver of Counsel

1. Felony

MCR 6.005(D)(1)-(2) applies to felony cases and states that the court may not permit the defendant to waive the right to be represented by a lawyer without first:

- advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self representation; and
- offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

MCR 6.005(E) also states that if the defendant waives his/her right to the assistance of a lawyer, the record of each subsequent proceeding must affirmatively show that the court advised the defendant of the right to a lawyer's assistance and that the defendant waived that right. Subrule (E)(1)-(3) states that before the court begins such proceedings:

- the defendant must reaffirm that a lawyer's assistance is not wanted; or
- if the defendant requests a lawyer and is financially unable to retain one, the court must appoint one; or

- if the defendant wants to retain a lawyer and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one.

2. Misdemeanor

MCR 6.610(D)(3)(a)-(b) states that the right to the assistance of an attorney, to an appointed attorney, or to a trial by jury is not waived unless the defendant has been informed of the right; and has waived it in a writing that is made a part of the file or orally on the record.

G. Recovering Expense - Misdemeanor

1. Authority

a. Reimbursement After Sentencing

The authority for recovering costs is in MCL 769.3 and MCL 771.3.

Under MCL 769.3, costs of prosecution can be ordered as a condition of sentence only if the offense is punishable by the option of either fine or imprisonment. If a charge is punishable only by imprisonment, costs cannot be imposed. [People v Tims, 127 Mich App 564; 339 NW2d 488 (1983)]

Under MCL 771.3 costs are authorized as a condition of probation only. In addition, costs as a condition of probation are limited by the defendant's ability to pay. [People v Lambert, 151 Mich App 328; 390 NW2d 2 (1986)]

b. Condition of Probation

Payment of costs as a condition of probation is seen as reimbursement to the public and not as punishment [People v Teasdale, 355 Mich 1, 5-6; 55 NW2d 149 (1952)]. Therefore, statute allows a magistrate, without a hearing, to set an amount reflecting the costs "reasonably related to the expense of the prosecution" [People v Blanchura, 81 Mich App 399, 404; 265 NW2d 348 (1978)]

When reimbursement is a condition of probation, the court may only collect money for reimbursement while the probation order is in effect. Once a probationer is discharged from probation, further collection is prohibited. MCL 771.3(7)(a) states that "the court shall not require a probationer to pay costs unless the probationer is or will be able to pay them during the term of probation." Costs do not include restitution under MCL 780.826(13) or assessment under MCL 780.905.

Probation may not be revoked for failure to pay costs if the reason for nonpayment is the defendant's indigency. [People v Terminelli, 68 Mich App 635; 243 NW2d 703 (1976); People v Lemon, 80 Mich App 737; 265 NW2d 31 (1978)]

2. Reimbursement

Number 2(c) on form DC 213, Advice of Rights, informs a defendant that “you may have to repay the expense of a court appointed attorney.” (Emphasis added). This requirement is that the defendant repay the court for attorney fees, and is different from the contribution requirement in the felony rule. The authority for requiring repayment is derived from MCL 771.3(6), which authorizes the court, as a condition of probation, to require the defendant to pay costs and expenses incurred in his or her prosecution. Thus, the defendant may be required to “repay” the court for attorney fees only after he or she has been found guilty and sentenced.

5.2.4 Failure to Appear - Misdemeanor Traffic

If a defendant fails to answer a citation, or a notice to appear in court for a violation reportable to the Secretary of State under MCL 257.732 or a local ordinance substantially corresponding to a violation of a law of this state reportable to the Secretary of State under MCL 257.732 or for any matter pending relative to a misdemeanor traffic citation, the court shall proceed under MCR 6.615(B) as follows:

A. Resident

If the defendant is a Michigan resident, the court must initiate the procedures required by MCL 257.321a for the failure to answer a citation. In addition, the court may issue a warrant (SCAO Approved form DC 225 or DC 226) for the defendant's arrest after a sworn complaint (SCAO Approved form DC 225 or UC-01a) is filed with the court. A citation may serve as the sworn complaint and as the basis for a misdemeanor warrant. Procedures under MCL 257.321a are as follows:

1. For Offenses Other than Alcohol and Drug Offenses

Under MCL 257.321(a)(2):

- 28 days or more after a person fails to answer a citation or notice to appear in court or for any matter pending, the court shall give notice by mail at the last known address of the person.
- the notice shall indicate that if the person fails to appear . . . within 14 days after the notice is issued, the Secretary of State shall suspend the person's operator's or chauffeur's license. (SCAO Approved form MC 216)
- if the person fails to appear . . . within the 14 day period, the court shall inform the Secretary of State within 14 days.
- upon being informed by the court, the Secretary of State shall immediately suspend the license of the person and notify the person of the suspension by regular mail at the person's last known address.

2. For Alcohol and Drug Offenses

Under MCL 257.321(a)(3) and (4), if a person fails to answer a citation or notice to appear or for any matter pending for violating MCL 257.625 (1)-(8) or a local ordinance substantially corresponding to MCL 257.625(1), (2), (3), (6), or (8) the court shall:

- immediately give notice by first-class mail sent to the person's last known address to appear within 7 days after the notice is issued.
- include in the notice that if the person fails to appear within 7 days after the notice is issued, the Secretary of State shall suspend the person's operator's or chauffeur's license within 14 days after the notice is issued. (SCAO Approved form MC 216a)
- immediately inform the secretary of state if the person fails to appear within the 7-day period who shall immediately suspend the person's operator's or chauffeur's license and notify the person of the suspension by first-class mail sent to the person's last known address.

B. Non-Resident

If the defendant is not a Michigan resident:

1. the court may mail a notice to appear to the defendant at the address in the citation;
2. the court may issue a warrant (SCAO Approved form DC 225 or DC 226) for the defendant's arrest after a sworn complaint (SCAO Approved form DC 225 or UC-01a) is filed with the court;
3. if the court has received the driver's license of a nonresident, pursuant to statute, it may retain the license as allowed by statute. The court need not retain the license past its expiration date; and
4. if the court has received a cash bond, pursuant to statute, it may order the bond forfeited and enter a judgment for the bond, including any balance remaining unpaid.

5.2.5 Contested Misdemeanor Traffic Cases

A contested case may not be heard until a sworn complaint is filed with the court. A citation serves as the sworn complaint and as the basis for a misdemeanor warrant. A misdemeanor traffic case must be conducted in compliance with the constitutional and statutory procedures and safeguards applicable to misdemeanors cognizable by the district court. [MCR 6.615(D)]

If a citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer who issued it and is filed on paper. A citation that is not signed and filed on paper when required by the court will be dismissed with prejudice. [MCR 6.615(D), MCR 8.125]

If the defendant refuses to plead, or stands mute, or the court refuses to accept the plea, the court must enter a not guilty plea on the record. A plea of not guilty places at issue every material allegation in the information and permits the defendant to raise any defense not otherwise waived. [MCR 6.301(A)]

If a defendant pleads not guilty to a charged offense, the matter shall be scheduled for pretrial and/or trial and a pretrial release or custody order issued. See Section 4 for details on bond/bail.

5.2.6 Misdemeanor Plea

A. Overview

1. Purpose

A defendant charged with a misdemeanor offense, may plead not guilty, guilty, or nolo contendere (no contest), or stand mute. [MCR 6.610(D)(4), (E)]

2. Authority

A district court magistrate has the jurisdiction and authority to arraign and sentence upon pleas of guilty or nolo contendere for those violations expressly authorized in MCL 600.8511(a), when authorized by the chief judge of the district court and if the maximum permissible punishment does not exceed 90 days in jail or a fine, or both. The magistrate should follow the criminal procedure for district court prescribed by subchapter 6.600 of the Michigan Court Rules and other general provisions authorized for use in misdemeanor cases by MCR 6.001(B).

3. Complaint

A uniform law citation (appearance ticket) may be issued for most offenses with a penalty of 93 days or less. The uniform law citation is a sworn complaint. If the defendant pleads not guilty, no further proceedings may be had until the original citation or a sworn complaint is filed with the court. [MCL 600.8511, 764.9g(1), MCR 6.615(A)(1)(a)]

When a defendant appears for arraignment on a violation which could have enhanced penalties, and the court has not received the original citation or complaint, the court may elect to delay arraignment pending receipt of the citation and/or review by the prosecuting official.

B. Record Requirements

Unless a writing is permitted, a verbatim record of the proceedings must be made. [MCR 6.610(C)] All proceedings in the district court shall be recorded by the district court recorder by the use of recording devices approved by the State Court Administrator, or taken by the district court reporter. [MCL 600.8611]

MCR 6.610(E)(5) requires the court to make the plea agreement a part of the record and determine that the parties agree on all the terms of that agreement. The court shall accept, reject or indicate on what basis it accepts the plea.

C. Types of Plea

1. Not Guilty Pleas

At arraignment, after being informed of the charges against him or her, if the defendant refuses to plead or stands mute or the court refuses to accept a plea of guilty, the court must enter a not guilty plea on the record. [MCR 6.301(A)] If a defendant pleads not guilty to a charged offense, the matter shall be scheduled for pretrial and/or trial.

A defendant may enter a plea of not guilty or stand mute without formal arraignment by filing a written statement signed by the defendant and any defense attorney of record, reciting the general nature of the charge, the maximum possible sentence, the rights of the defendant at arraignment, and the plea to be entered. The court may require that an appropriate bond be executed and filed and appropriate and reasonable sureties be posted or continued as a condition precedent to allowing the defendant to be arraigned without personally appearing before the court. [MCR 6.610(D)(4)]

A plea of not guilty places in issue every material allegation in the information and permits the defendant to raise any defense not otherwise waived. [MCR 6.301(A)]

2. Guilty Pleas

A magistrate may accept a defendant's plea of guilty at the time of arraignment. Before accepting a plea of guilty or no contest the court shall in all cases comply with the court rule. See F. and G., page of this subchapter for details. [MCR 6.610(E)]

No person charged with an offense shall be convicted of it unless by confession of his/her guilt in open court or by admitting the truth of the charge against him/her after trial by the court, or by the verdict of a jury. [MCL 763.2]

a. Unconditional Guilty Pleas

According to People v Eaton, 184 Mich App 649 (1990), an unconditional guilty plea relinquishes all personal jurisdiction defects including the constitutional and statutory guarantees to a speedy trial. In affirming defendant's conviction, the Court of Appeals noted that a conflict exists between panels of the Court concerning whether a defendant who enters an unconditional plea relinquishes his/her right to a speedy trial. The majority in Eaton agreed with the cases holding that an unconditional plea waives both the constitutional and statutory guarantees of a speedy trial.

The Court cited People v Phillips, 383 Mich 464 (1970), where the Supreme Court held that a defendant may waive personal jurisdiction defenses and concluded that the right to a speedy trial is a matter of personal jurisdiction, rather than subject matter jurisdiction, and is therefore waived by a guilty plea.

A defendant may waive a violation of the 180-day rule by his entry of an unconditional plea of guilty or no contest. People v Irwin, 192 Mich App 216 (1991). The Irwin decision is a conflict resolution decision and must be followed by all panels of the Court of Appeals pursuant to AO 1990-6.

The statute of limitations for a criminal offense is waivable by an unconditional plea of guilty or no contest. [People v Allen, 192 Mich App 592 (1992)]

The 180-day rule does not apply to a criminal offense committed by an inmate in a correctional facility after the inmate has escaped and before the inmate has been returned to the custody of the Department of Correction. [People v Rosie Smith, 438 Mich 715 (1991)]

b. Conditional Guilty Pleas

MCR 6.610 does not discuss conditional pleas and their availability to misdemeanor cases. However, it is the opinion of the MJJ Benchbook Committee that the rule stated in People v Reid, 420 Mich 336 (1984), is applicable in misdemeanor cases. This rule has been incorporated into MCR 6.301(C)(2). Thus, although MCR 6.301(C)(2) is not specified as being applicable to misdemeanor cases, it would appear that Reid would justify allowing a conditional plea in district court. As such, MCR 6.301(C)(2) provides guidance.

A conditional plea entitles the defendant to appeal a specified pretrial ruling or rulings notwithstanding the plea-based judgment, and to withdraw the plea if a specified pretrial ruling or ruling is overturned on appeal. The ruling or rulings as to which the defendant reserves the right to appeal must be specified orally on the record or in a writing made a part of the record. Conditional pleas require the consent of the court and the prosecutor before being entered. [MCR 6.301(C)(2)]

The availability of the conditional plea, of course, should not be construed to preclude a defendant from raising on appeal issues that are not waived by entry of an unconditional plea. The question of what issues are not waived by a plea is answered by case law. See People v Reid, 420 Mich 326 (1984), which held that a defendant may agree with the prosecutor and the court to enter a plea of guilty while preserving for appeal purposes a challenge to a pretrial ruling that might otherwise be waived by the plea.

In People v McFadden, 433 Mich 868 (1989), the Supreme Court reversed and remanded defendant's guilty plea based conviction. Prior to defendant McFadden's plea to larceny in a building, the trial court denied his motion to suppress evidence and quash the information. Defendant attempted to preserve this issue for appeal by asking the trial court for permission to enter a conditional plea. The trial court granted defendant's request without asking whether the prosecutor objected. The Court of Appeals affirmed defendant's conviction, holding that he did not preserve his search and seizure issue because the defendant, judge, and prosecutor must all agree to a conditional guilty plea. The Supreme Court held:

"[T]he record is clear in this case that the agreement concerning the preservation of the issue in question was made in the presence of the assistant prosecuting attorney. While the assistant prosecuting attorney did not object to this agreement nor consent to it, under the circumstances of this case, we believe the appropriate remedy is to place the defendant in the position he enjoyed prior to making the agreement in question."

Note: The summary disposition in McFadden, issued 2 months prior to the adoption of MCR 6.301(C)(2), indicates that a prosecutor's silence should not be interpreted as acquiescence to a conditional plea agreement. The adoption of MCR 6.301(C)(2) makes it clear that a valid conditional plea requires the consent of the court and the prosecutor before being entered.

3. **Nolo Contendere (No Contest) Pleas**

A defendant may enter a plea of nolo contendere (also referred to as a no contest plea) at the time of arraignment or at any judicial proceeding thereafter. The acceptance of a no contest plea for misdemeanor cases is governed by MCR 6.610(E).

A nolo contendere plea differs from a guilty plea in that although the defendant does not admit guilt or responsibility, he or she does not contest the prosecutor's allegations. A no contest plea may be offered for a variety of reasons such as: 1) reluctance by defendant to relate the details of a particularly sordid crime; 2) defendant's recollection of the facts may be unclear due to intoxication or because so many similar crimes were committed that defendant cannot differentiate one from another; and 3) defendant wishes to minimize other repercussions, e.g., civil litigation. This enumeration is not meant to be exhaustive. [Guilty Plea Cases, 395 Mich 96, 134 (1975)]

a. Reason for Nolo Contendere Plea

A no contest plea is generally recognized as an alternative to a guilty plea. [MCR 6.610(E)(1)(b)] Its acceptance is within the court's discretion. The court should state on the record why a no contest plea is accepted in a particular case. [People v Harper, 83 Mich App 390 (1978)]

MCR 6.610(E)(1)(b), based upon the rule announced in Guilty Plea Cases, 395 Mich 96 (1975), states that in a nolo contendere plea, the court shall not question the defendant about his or her participation in the crime, but "shall make the determination based on the basis of other available information."

Even though a nolo contendere plea is not taken in the same manner as a guilty plea, once it has been accepted, the court is to proceed to sentencing in the same manner as after a guilty plea. [People v Chilton, 394 Mich 34 (1975)] See also MCL 767.37; MSA 28.977. If a no contest plea is accepted at the arraignment, the court shall proceed as if defendant pled guilty.

b. Significance of Nolo Contendere Plea

A nolo contendere plea is significant for the following reasons: 1) it may not serve as proof of the fact that defendant committed the offense to which the plea is entered in a civil action; 2) the judgment following such a plea is a conviction and has the same legal significance as a guilty plea for purposes of other criminal proceedings (e.g., to apply multiple offender penalty provisions, to claim double jeopardy in a subsequent prosecution, etc.); and 3) when accepted, the no contest plea has essentially the same effect as that of a guilty plea — the procedures for receiving the plea are the same, the defendant may receive the same sentence, and it is like a guilty plea in terms of its finality. See LaFave, W. and Israel, J., Criminal Procedure, vol. 2, "Receiving the Defendant's Plea," § 20.4, p. 637 (1984).

4. Guilty but Mentally Ill, Not Guilty by Reason of Insanity

A magistrate cannot accept pleas of guilty but mentally ill or not guilty by reason of insanity. Further, acceptance of pleas of guilty but mentally ill or not guilty by reason of insanity do not appear to be applicable to misdemeanor cases. [MCL 768.36(2), MCL 330.2050.

D. Competency Requirements

A defendant must be competent in order to tender a valid guilty plea. [People v Kline, 113 Mich App 733 (1982)]

A trial court has an obligation to render a separate finding of competency where a plea is offered and the record provides significant evidence of possible incompetency. [People v Whyte, 165 Mich App 409 (1988)]

1. Presumption as to Competency

MCL 330.2020 discusses the standards for a presumption as to defendant's competence and for a determination as to incompetence. If a magistrate has any doubt of the competency of the defendant, he or she should refuse to accept a plea and refer the case to the judge for further proceedings.

Under MCL 330.2020(1), a defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. The court shall determine the capacity of a defendant to assist in his defense by his ability to perform in the preparation of his defense and during trial.

Under MCL 330.2020(2), a defendant shall not be determined incompetent to stand trial because of psychotropic drugs or other medication that have been or are being administered under proper medical direction, and even though without such medication the defendant might be incompetent to stand trial. However, when the defendant is receiving such medication, the court may, prior to making its determination on the issue of incompetence to stand trial, require the filing of a statement by the treating physician that such medication will not adversely affect the defendant's understanding of the proceedings or his ability to assist in his defense.

2. Determination of Competency

MCR 6.125 governs hearings to determine mental competency. Except as provided in these rules, a mental competency hearing in a criminal case is governed by MCL 330.2020 et seq.

The issue of defendant's competence to stand trial or to participate in other criminal proceedings may be raised at any time during the proceedings against defendant. The issue may be raised by the court or by motion of a party. Unless the issue of defendant's competence arises during the course of proceedings, a motion raising the issue of defendant's competence must be in writing. If the competency issue arises during the course of the proceedings, the court may adjourn the proceeding or, if the proceeding is defendant's trial, the court may, consonant with double jeopardy considerations, declare a mistrial.

In People v Harris, 185 Mich App 100 (1990), the Court of Appeals held that when there is a "bona fide doubt" about defendant's competency, the trial court must *sua sponte* raise the issue of defendant's competency and order a competency evaluation even if defense counsel does not request it.

See People v Willie Miller, 186 Mich App 238 (1990), 437 Mich 1030 (1991), where the Court of Appeals held that dismissal of a case is required when the accused has been adjudicated incompetent for a total period of more than 15 months, regardless of whether the period of incompetency was continuous.

See MC 204, Order for Competency Examination

a. Order for Examination

- 1) On a showing that defendant may be incompetent to stand trial, the court must order the defendant to undergo an examination by a certified or licensed examiner of the center for psychiatry or other facility officially certified by the department of mental health to perform examinations relating to the issue of competence.
- 2) The defendant must appear for the examination as required by the court.
- 3) If the defendant is held in detention pending trial, the examination may be performed in the place of detention or the defendant may be transported by the sheriff to the diagnostic facility for examination.
- 4) The court may order commitment to a diagnostic facility for examination if the defendant fails to appear for the examination as required or if commitment is necessary for the performance of the examination.
- 5) The defendant must be released from the facility on completion of the examination and, if 3) above is applicable, returned to the place of detention.

On a showing of good cause by either party, the court may order an independent examination of the defendant relating to the issue of competence to stand trial.

A competency hearing must be held within 5 days of receipt of the report required by MCL 330.2028 or on conclusion of the proceedings then before the court, whichever is sooner, unless the court, on a showing of good cause, grants an adjournment.

b. Motions

- 1) A motion made while a defendant is incompetent to stand trial must be heard and decided if the presence of the defendant is not essential for a fair hearing and decision on the motion.
- 2) Testimony may be presented on a pretrial defense motion if the defendant's presence could not assist the defense.

E. Advice of Rights

The court shall advise the defendant at a guilty plea of his or her rights on the record, in a writing made part of the file, or in a writing referred to on the record. [MCR 6.610(E)(4)] These rights must be given to the defendant before a plea of guilty or nolo contendere can be accepted.

If the court uses a writing to inform the defendant of his/her rights, the court shall address the defendant and obtain from him/her orally, on the record, a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights. [MCR 6.610(E)(4)]

1. Grouping of Rights

The "grouping" of rights (i.e., combining a number of rights and imparting several items of information without pause for response by defendant) is consistent with the requirement that the judge "personally address" the defendant. No one method of recital is required. [Guilty Plea Cases, 395 Mich 96, 115 (1975).]

A guilty plea conviction will not be reversed if the judge engages in the required colloquy but fails to mention an item which the record shows was established by the prosecutor or defense counsel in the hearing of the judge and defendant. [Guilty Plea Cases, 395 Mich 96, 114-115 (1975)]

2. Repeating Rights When Guilty Plea Occurs Subsequent to Arraignment

The Supreme Court, in a decision issued prior to Guilty Plea Cases, held that the advice of rights must be given when the plea is tendered; that the judge may not rely on warnings given at a previous court proceeding. [City of Livonia v Jasik, 393 Mich 439,

442-443 (1975)] However, the Court of Appeals in a later case held that reversal was not required when defendant was advised of his rights at the time of originally entering a guilty plea, even though that plea was withdrawn and defendant later entered another plea at which the court did not readvise defendant of his rights. [People v Kosecki, 73 Mich App 293 (1977)] The panel deciding Kosecki based its decision on Guilty Plea Cases and did not cite Jasik.

Note: It is recommended the defendant be informed of his rights again (in writing or on the record) if his or her plea occurs at any point in time after the original advice of rights.

3. Advice About Right to Counsel

A defendant has the right to the assistance of an attorney if:

- a. the offense charged is punishable by over 92 days in jail,
- b. the offense charged requires a minimum jail sentence, or
- c. the court determines that it may send the defendant to jail.

Upon such a determination, the court shall inform the defendant that if defendant is indigent, he or she has the right to an appointed attorney. Case law establishing that a subsequent charge or sentence may not be enhanced because of this conviction unless a defendant is represented by an attorney or he or she waives the right to an appointed attorney is no longer current. In Reo v Reichenbach, 224 Mich App 186 (1997) the court stated that in this respect MCR 6.610(E)(2)(c) is “invalid because it no longer relates to any practice or procedure supported by case law.” [MCR 6.610(E)(2)]

People v Bailey, 7 Mich App 157 (1967) held that the right to an attorney attaches not only to the trial, but to the guilty plea proceeding itself. Defendant should, therefore, specifically waive his right to have an attorney at both the trial and guilty plea proceedings.

The defendant may waive his or her right to counsel but not until the court advises the defendant of the charge, the maximum possible prison sentence, and any mandatory minimum sentence, as well as the risks of self representation. The defendant must also be given the opportunity to consult with a lawyer before executing a waiver of the right to counsel. [MCR 6.005(D)]

4. Advice About Possible Sentence

MCR 6.610(E)(3)(a) requires that the court advise the defendant at a guilty plea of “the mandatory minimum jail sentence, if any, and the maximum possible penalty for the offense.” This advice must be given to defendant orally on the record at the guilty plea.

It may also be given to defendant in a writing at his/her arraignment. [MCR 6.610(D)(1)]

Before accepting a plea of guilty or nolo contendere under section 625 or a local ordinance substantially corresponding to section 625(1), (2), (3), (6), or (8), the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation and shall advise the defendant that the maximum possible license sanctions that may be imposed will be based upon the master driving record maintained by the secretary of state under section 204a. [MCL 257.625b(4)]

There is no court rule or statute requiring the court to inform a misdemeanor defendant that a plea of guilty may result in violation of probation or parole. It is recommended this information be given the defendant before plea is accepted as a matter of fairness and equity.

5. Advice About Relinquishment of Trial Rights

The court must inform the defendant that if the plea is accepted, he or she will not have a trial of any kind and gives up the rights he or she would have at trial including:

- a. the right to have witnesses called for his/her defense.
- b. the right to cross-examine all witnesses called against him or her.
- c. the right to testify or to remain silent without an inference being drawn from this silence.
- d. the presumption of innocence and the requirement that his or her guilt be proven beyond a reasonable doubt.

[MCR 6.610(E)(3)(b)(i)-(iv)]

A defendant is entitled to a jury trial unless he or she is charged under an ordinance that does not correspond to a criminal statute, or an ordinance that does not permit a jail sentence. [MCR 6.610(D)(1)]

Except in minor offense cases (less than 93 days), the waiver of a jury trial must be made both in writing and in open court after the defendant has had an opportunity to consult with counsel. It must also be made with the consent of the prosecutor and court. [MCL 763.3(1) and (2)]

F. Determine Accuracy and Basis of Plea

1. Basic Elements

The essence of a constitutionally valid plea is waiver which is comprised of three elements:

- knowledge of certain substantive due process rights. [McCarthy v US, 395 US 459; 89 S.Ct. 1166; 22 L.Ed.2d 418 (1969)]
- voluntary relinquishment of the substantive rights. [Boykin v Alabama, 395 US 238; 89 S.Ct. 1709; 23 L.Ed.2d 274 (1969)]
- on the record. [Boykin, *supra*]

The minimum standards set forth in Boykin require the trial court to ensure that the defendant 1) understands: a) the nature of the charge; b) the acts sufficient to constitute the offense that the defendant is charged with; and c) the permissible range of the sentence; and 2) understands and voluntarily relinquishes the: a) privilege against compulsory self-incrimination; b) right to confront accusers; and c) right to trial by jury.

Washington v Texas, 388 US 14; 87 S.Ct. 1920; 18 L.Ed.2d 1019 (1967), added additional the following additional requirements: the defendant understands and voluntarily relinquishes the: 1) right to present a defense and use the subpoena power of the court to summon witnesses; and 2) right to be presumed innocent and to place, on the prosecutor, the burden of proving guilt beyond a reasonable doubt.

If the defendant is in jeopardy of incarceration upon conviction, the court should ensure the defendant understands and voluntarily relinquishes the right to counsel and to court appointed counsel if indigent.

Michigan has adopted a policy that if the record does not reflect that the defendant understands and waives these rights, the plea is defective and this cannot be cured on remand. [In re Guilty Plea Cases, 395 Mich 96; 235 NW2d 132; *cert denied*, 429 US 1108; 97 S.Ct. 1142; 51 L.Ed.2d 56 (1975)]

- a. if the defendant pleads guilty, the court, by questioning him or her, shall establish support for a finding that defendant is guilty of the offense charged or the offense to which he or she is pleading, or
- b. if the defendant pleads nolo contendere, the court shall not question him or her about his or her participation in the crime but shall make the determination on the basis of other available information.

Whenever a person pleads guilty to any information, it is the duty of the trial court to satisfy itself that the plea was made freely, with full knowledge of the accusation, and without undue influence. Whenever the judge has reason to doubt the truth of a plea of guilty, he or she shall vacate it and direct a plea of not guilty be entered and order a trial of the issue. [MCL 768.35]

All guilty plea cases that involve matters not on the record, such as involuntary pleas based on alleged beatings or inducements, must be brought first to the trial court for a review of the validity of the plea. [People v Taylor, 387 Mich 209 (1972)]

A defendant must be competent in order to tender a valid guilty plea. [People v Kline, 113 Mich App 733 (1982)]

A trial court has an obligation to render a separate finding of competency where a plea is offered and the record provides significant evidence of possible incompetency. [People v Whyte, 165 Mich App 409 (1988)]

Defendant's plea stating that he was present during the commission of the crime, but denying any plan to commit it or that he received any of its proceeds, was so equivocal that acceptance of the plea was error. [People v Thomas, 36 Mich App 357 (1971)]

A guilty plea is valid even if the facts admitted establish only the crime charged and not the crime to which defendant pled guilty. In People v LaFay, 182 Mich App 528, 531-532 (1990), defendants were charged with receiving and concealing stolen property over \$100, but pled guilty to attempted larceny in a building. At their guilty pleas, defendants admitted facts sufficient to establish the receiving and concealing charge but not the attempted larceny. Defendants appealed, arguing that there was an insufficient basis on which to support their convictions. The Court of Appeals affirmed the convictions stating that under MCR 6.302(D)(1), factual support that the defendant is guilty of either the offense charged or the offense to which he pled guilty is sufficient for the plea to be valid.

3. Establishing the Factual Basis of a Nolo Contendere Plea

The factual basis for a nolo contendere plea may be established by a police report or officer's statement, or other unobjected-to hearsay that is incorporated in the record. [People v Maciejewski, 68 Mich App 1, 3-4 (1976)] See also People v Johnson, 122 Mich App 26 (1982) and People v Jasinski, 84 Mich App 670 (1978).

If a nolo contendere plea is offered to a specific intent crime because the defendant was too intoxicated to remember the crime, then the prosecutor must offer evidence rebutting the intoxication defense. [People v Polk, 123 Mich App 733 (1983)]

In Guilty Plea Cases, 395 Mich 96, 133-134 the Supreme Court stated that in requiring the judge to state reasons for accepting a nolo plea, the rule expresses this Court's preference for interrogation of the defendant by the judge and for reliance on his responses to establish a factual basis. Since direct questioning is not possible where the defendant offering a plea is unable or unwilling to admit his guilt or relate the details of the alleged criminal conduct, the rule requires that there be especial circumstances justifying departure from the norm of direct questioning of the defendant, as in a guilty plea, and acceptance of a plea of nolo contendere.

G. Accepting Plea

After the court has followed the procedure of MCR 6.610, it must accept the plea on the record. [MCL 763.2] Once the court has accepted a plea of guilty or no contest, it shall sentence the defendant or defer sentencing until it receives a presentence report. [MCR 6.610(F)] [See also People v Ginther, 390 Mich 436 reversing 39 Mich App 113 (1972); acceptance of a guilty plea constitutes a conclusive conviction. People v Eaton, 184 Mich App 649 (1990); an unconditional guilty plea relinquishes all personal jurisdiction defects including the constitutional and statutory guarantees to a speedy trial.]

Effective September 1, 2004, when a person who has not previously been convicted of or received a juvenile adjudication for a violation of MCL 436.1703(1) pleads guilty, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and must place the individual on probation. While proceedings are deferred and the individual is on probation, the court shall maintain a nonpublic record of the matter. The court must report the deferred sentence to the Department of State. The Department of State shall retain a nonpublic record of the plea.

The court shall make a plea agreement a part of the record and determine that the parties agree on all the terms of that agreement. The court shall accept, reject, or indicate on what basis it accepts the plea. [MCR 6.610(E)(5)]

The magistrate must also keep the elements of misdemeanor traffic offenses in mind for purposes of accepting a plea of guilty or nolo contendere under MCL 600.8511(a). The magistrate should not accept a guilty plea in a misdemeanor traffic case if the defendant does not admit to all the elements of the misdemeanor offense for which sentence is to be imposed.

The following list contains examples of traffic misdemeanors for which a magistrate may impose sentence upon a plea of guilty or no contest under MCL 600.8511(b). Some of these misdemeanors are subject to a 90-day term of imprisonment; others are subject to a 93-day term. See MCL 257.901 for general penalty provisions under Motor Vehicle Code (unless a specific penalty is designated, or unless a violation is designated a felony or civil infraction, violations are misdemeanors punishable by 90 days and/or \$100.)

| MCL Section | Description |
|--------------------|---|
| 257.215 | Operate or permit to operate an unregistered vehicle (90 days) |
| 257.233 | Fail to transfer title (93 days) |
| 257.243 | Fail to register foreign vehicle (90 days) |
| 257.255 | See statute for misdemeanor registration violations (90 days) |
| 257.256 | Unlawful lending or use of title, registration, plate, or special permit (90 days) |
| 257.301 | Operate without valid operator's or chauffeur's license with appropriate designation and/or endorsement (90 days) |
| 257.306 | Operate without or violate temporary instruction permit (90 days) |
| 257.311 | Operate without or fail to display operator's or chauffeur's license (90 days) |
| 257.312 | Violate license restrictions (90 days) |
| 257.312a | Drove without motorcycle endorsement (90 days) |
| 257.315 | Reporting false address on operator's license (93 days) |
| 257.319d(4) | Operate during 24-hour out-of-service period (90 days) |
| 257.321a | Fail to answer citation or comply with judgment (93 days) |
| 257.324 | Prohibited use of operator's or chauffeur's license (90 days) |
| 257.325 | Allow unlicensed minor to drive (90 days) |
| 257.326 | Allow operation of vehicle in violation of MVC (90 days) |
| 257.327 | Employ unlicensed chauffeur (90 days) |
| 257.602 | Disobey police officer directing traffic (90 days) |
| 257.612(4) | Fail to yield to handicapped person in crosswalk (90 days) |
| 257.613d | Fail to stop for school crossing guard (90 days) |
| 257.615 | Improper display or use of signs or lights resembling traffic-control devices (90 days) |

| MCL Section | Description |
|--------------------|---|
| 257.616 | Interfere with traffic-control device, or railroad sign or signal (90 days) |
| 257.618 | Fail to stop after property damage accident (90 days) |
| 257.619 | Fail to give information and aid at accident resulting in injury or death (90 days) |
| 257.620 | Fail to stop and locate owner after accident with unattended vehicle (90 days) |
| 257.621 | Fail to stop and locate owner after fixtures accident (90 days) |
| 257.622 | Fail to report accident causing injury or death, or damage to property totaling \$400 or more (90 days) |
| 257.623 | Garage keepers or repairmen; fail to report vehicle showing evidence of involvement in accident (90 days) |
| 257.624a | Transport/possession open alcohol (90 days) |
| 257.624b | Person under 21 transport/possess alcohol in a motor vehicle (formerly MCL 436.33a) (90 days) |
| 257.626 | Reckless driving (93 days) |
| 257.626a | Drag racing (90 days) |
| 257.677a | Obstruction of vision by removal of snow, ice, or slush (90 days) |
| 257.681 | Bus; Fire extinguisher required (90 days) |
| 257.698(5)-(6) | Improper use, sale of oscillating or rotating lights (90 days) |
| 257.707c | Exhaust; defective, noise violation (90 days) |
| 257.719b | Mobile Home transportation violation (90 days) |
| 257.724(6) | Improper loads, towing (90 days) |
| 257.904 | Driving while license suspended, revoke, denied (93 days) |
| 257.904a | Driving unlicensed, not applied in last 3 years (90 days) |
| 257.905 | Violation of financial responsibility chapter (90 days) |

H. Written Plea and Plea by Mail

A plea of no contest or guilty in writing is permissible if the court decides that the combination of circumstances and the range of possible sentences makes the situation proper for such a plea. [MCR 6.610(E)(6)(a)] If the court decides a plea in writing is appropriate, the court must notify the defendant in writing, in advance of the plea, of the sentence to be

imposed and the rights of MCR 6.610(E)(3)(b) (see SCAO Approved form, DC 223). The defendant must then acknowledge, in a writing that is placed in the district court file, that he/she pleads guilty or no contest and consents to the sentence to be imposed. [MCR 6.610(E)(6)(b), (c)]

1. Plea of Not Guilty or Stand Mute

The court may allow a defendant to enter a plea of not guilty or to stand mute without formal arraignment by filing a written statement signed by the defendant and any defense attorney of record, reciting the general nature of the charge, the maximum possible sentence, the rights of the defendant at arraignment, and the plea to be entered. The court may require that an appropriate bond be executed and filed and appropriate and reasonable sureties posted or continued as a condition precedent to allowing the defendant to be arraigned without personally appearing before the court. (SCAO Approved form DC 223) [MCR 6.610(D)(4)]

2. Plea of Guilty or No Contest

A plea of guilty or no contest in writing is permissible without a personal appearance of the defendant if:

- a. the court decides that the combination of the circumstances and the range of possible sentences makes the situation proper for a plea of guilty or no contest;
- b. the court notifies the defendant in writing, in advance of a plea, of the following:
 - the sentence to be imposed in the particular case, and
 - the rights enumerated in MCR 6.610(E)(3)(b) (SCAO Approved form DC 213).
- c. the defendant acknowledges guilt or no contest, and the sentence to be imposed, in a writing to be placed in the district court file (SCAO Approved form DC 223).

[MCR 6.610(E)(6)]

I. Withdrawal of Plea

A defendant may not challenge a plea on appeal unless the defendant moved in the trial court to withdraw the plea for noncompliance with applicable court rules. A motion to withdraw a plea may be made either before or after sentence has been imposed. [MCR 6.610(E)(7)(a)]

If, in the course of a motion to withdraw a plea, the trial court determines that a deviation affecting substantial rights of the defendant occurred, it shall correct the deviation and give the defendant the option of permitting the plea to stand or of withdrawing the plea. [MCR 6.610(E)(7)(b)]

If, the trial court determines that a deviation did not occur, or that the deviation did not affect substantial rights of the defendant, it may permit the defendant to withdraw the plea only if it does not cause substantial prejudice to the people because of reliance on the plea. [MCR 6.610(E)(7)(b)]

If a deviation is corrected, any appeal will be on the whole record including the subsequent advice and inquiries. [MCR 6.610(E)(7)(c)]

Note: Although it is not specified as a rule applicable to misdemeanor cases, MCR 6.310(B) creates a new standard restricting the court's discretion to set aside pleas. In response to People v Zaleski, 375 Mich 71 (1965), which held that the trial court's discretion in allowing the withdrawal of pleas should be exercised with great liberality if the request is made before sentencing, MCR 6.310(B) now allows the withdrawal of such a plea if it "is in the interest of justice" and if withdrawal of the plea would not "substantially prejudice the prosecutor because of reliance on the plea."

J. Appeal of Plea

MCR 7.101(B)(1)(a) states that except when another time is prescribed by statute or court rule, an appeal of right may be taken within 21 days after entry of the order or judgment appealed from. MCL 770.3(1)(b), (c) states that an appeal of right from a district court must be taken within 20 days after the entry of the judgment, or 20 days after entry of an order denying a motion for a new trial. Therefore, the 20 day time limit for appeals is applicable in these situations.

1. Waiver of Right to Appeal

A defendant, by way of a plea agreement, may waive the right to appeal his/her conviction and sentence, so long as he or she reserves that right to apply for leave to appeal under MCR 7.205, and the right to counsel if indigent. [People v Rodriguez, 192 Mich App 1 (1991)]

In People v New, 427 Mich 482 (1986), the court held that the entry of an unconditional guilty or nolo contendere plea waives the right to challenge on appeal a denial of a pretrial motion to suppress evidence or quash information because of insufficient evidence. A defendant may appeal from an unconditional plea only when the claim on appeal implicates the very authority of the state to bring the defendant to trial; such as when the right of the government to prosecute the defendant is challenged. Because the defendant's appeal in New was based on the state's ability to prove factual guilt, and did not challenge the authority of the state to prosecute, the court affirmed defendant's conviction.

2. Unconditional Guilty Pleas

The Court of Appeals in a series of recent cases has held that an unconditional guilty plea waives defendant's statutory and constitutional rights to be tried within specified periods of time. All of these decisions are "first-out" cases and must be followed by other panels pursuant to AO 1990-6.

- People v Depifiano, 192 Mich App 257 (1991), an unconditional guilty plea waives a claimed violation of the federal and Michigan Constitutional rights to a speedy trial.
- People v Wanty, 187 Mich App 291 (1991), an unconditional guilty plea waives a claimed violation of the 180-day rule found in the Interstate Agreement on Detainers Act, MCL 780.601 et seq.
- People v Irwin, 192 Mich App 216 (1991), an unconditional guilty plea waives a claimed violation of the 180-day rule found in the statute requiring disposition of untried charges against inmates of Michigan prisons, MCL 780.131 et seq.
- People v Allen, 192 Mich App 592 (1992), an unconditional guilty plea waives a statute of limitations defense.

3. Collateral Attacks

In People v Ingram, 439 Mich 288 (1992), the Supreme Court resolved a conflict in the Court of Appeals and held that a defendant may collaterally attack the validity of a prior guilty plea only if the plea was taken in violation of defendant's right to counsel as mandated by Gideon v Wainwright, 372 US 335 (1963).

5.2.7 Misdemeanor Adjudication

A. Presentence Information

While Michigan law indicates the court may direct the preparation of a presentence report in misdemeanor cases, it is probably unnecessary for the magistrate because sentencing cannot not exceed 90 days. [MCL 771.14] Since the presentence report can be an integral part of the sentencing process designed to help in making appropriate sentences, the magistrate should consult with the chief judge as to local practice, especially if probation is a possible sentence.

American Bar Association Standards mandate a presentence report in every case where incarceration for 1 year or more is a possible disposition where the defendant is less than 21 years old or where the defendant is a first offender, unless the defense waives production of the report and the court specifically finds that it has sufficient information to exercise the discretion accorded to it. [ABA Standards on Sentencing Alternatives and Procedures, Standards 18-5.1]

When the defendant requests the preparation of a presentence report, the request may not be denied without a good reason. While the magistrate has a right to deny a defendant's request for a presentence report, there should be good reason for doing so. [People v Schackelford, Mich App (1985)]

B. Pretrial/Trial

Adjudication of misdemeanor violations follow the rules of criminal procedure, which are controlled by due process rights provided by the U.S. and Michigan Constitutions. Procedural safeguards include the right to a jury trial, the right to counsel, proof beyond a reasonable doubt, and adherence to the rules of evidence. The question to be resolved by the court is not whether the defendant did in fact commit the crime, but whether or not the prosecution has proven guilt beyond a reasonable doubt.

The court, on its own initiative or on motion of either party, may direct the prosecutor and the defendant or the defendant's attorney to appear for a pretrial conference. The court may require collateral matters and pretrial motions to be filed and argued no later than this conference. [MCR 6.610(B)]

There is no specific court rule regarding trial procedure in misdemeanor cases. Magistrates do not have authority to conduct trials in misdemeanor cases.

C. Sentencing

At the sentencing, the court shall:

1. require the presence of the defendant's attorney, unless the defendant does not have one or has waived the attorney's presence;
2. give the defendant's attorney or, if the defendant is not represented by an attorney, the defendant an opportunity to review the presentence report, if any, and to advise the court of circumstances defendant believes should be considered in imposing sentence;
3. inform the defendant of credit to be given for time served, if any.
4. Determine whether or not the defendant has been fingerprinted. If the penalty for the offense is for more than 92 days, or would be punishable by more than 92 days as a second conviction and fingerprints have not been taken, fingerprints shall be ordered and the court shall report the conviction to the Michigan State Police Criminal Justice Information Center. Fingerprints and reporting to MSP are not required for a conviction of MCL 257.904(3)(a) or a substantially corresponding local ordinance.

[MCR 6.610(F)]

D. Imposing Jail Term

If a magistrate intends to impose a jail term upon a defendant, he or she must be aware that the defendant has a right to counsel. Indigent defendants are entitled to court-appointed counsel, and the magistrate has the authority (if conferred by the district judge) to grant petitions for the appointment of an attorney for an indigent defendant in a misdemeanor case punishable by imprisonment for not more than one year, or an ordinance violation punishable by imprisonment. [MCL 600.8513(2)(a)]

5.2.8 Misdemeanor Sanctions

A. Authority

Magistrates are authorized by statute to sentence defendants who plead guilty or nolo contendere to certain offenses. [MCL 600.8511]

1. A magistrate is permitted to sentence upon pleas of guilty or nolo contendere for violations of the following acts or parts of acts, or a local ordinance substantially corresponding to these acts or parts of acts, when authorized by the chief judge of the district court and if the maximum permissible punishment does not exceed 90 days in jail or a fine, or both:
 - a. Motor Carrier Act [MCL 475.1 et seq.]
 - b. Motor Carrier Safety Act [MCL 480.11 et seq.]
 - c. Dog Law Act of 1919 [MCL 287.261 et seq]
 - d. Michigan Liquor Control Act [MCL 436.1703, 436.1915]
 - e. Natural Resources and Environmental Protection Act

Sport Fishing [MCL 324.48701 et seq.]
Wildlife Conservation [MCL 324.40101 et seq.]
Marine Safety [MCL 324.80101 et seq.]
Littering [MCL 324.8901 et seq.]
Hunting and Fishing Licenses [MCL 324.43501 et seq.]
Recreational Trespass [MCL 324.73101 et seq.]
 - f. Trespass under the Penal Code [MCL 750.546 - 750.552a]
2. A magistrate is permitted to sentence upon pleas of guilty or nolo contendere for violations of the Michigan Vehicle Code MCL 257.1 et seq. or a local ordinance substantially corresponding to a provision of the Michigan Vehicle Code except for violations of MCL 257.625 and 257.625m or a local ordinance substantially corresponding to a provision of MCL 257.625 and 257.625m when authorized by the chief judge of the district court and if the maximum permissible punishment does not exceed 93 days in jail or a fine, or both. However, the magistrate may have the jurisdiction to arraign defendants and set bond with regard to violations of MCL 257.625 and 257.625m or a local ordinance substantially corresponding to MCL 257.625 and 257.625m.

3. A magistrate is permitted to sentence upon pleas of guilty or nolo contendere for violations of the following acts or a local ordinance substantially corresponding to a provision of the following acts except for violations of MCL 324.81134, 324.81135, 324.82128, and 324.82129 or a local ordinance substantially corresponding to MCL 324.81134, 324.81135, 324.82128, and 324.82129 when authorized by the chief judge of the district court and if the maximum permissible punishment does not exceed 93 days in jail or a fine, or both. However, the magistrate may have the jurisdiction to arraign defendants and set bond with regard to violations of MCL 324.81134, 324.81135, 324.82128, and 324.82129:
 - a. Snowmobiles [MCL 324.82101 et seq.]
 - b. Off-Road Recreation Vehicles [MCL 324.81101 et seq.]

B. Non-Traffic Misdemeanor Sanctions

Violations of the acts or local ordinances corresponding to the acts listed in A. of this subchapter, page 51, may be penalized by criminal, civil, and licensing sanctions depending on the nature of the offense. The magistrate should complete MC 219, Judgment of Sentence, Commitment to Jail as appropriate. (See chart on Criminal Penalties/Administrative Sanctions in the Appendix of this Section)

1. Penal Code

If the criminal sanction is not otherwise fixed by statute, a person convicted of a crime declared by any act of the state of Michigan to be a misdemeanor the penalty is imprisonment in the county jail for not more than 90 days or by a fine of not more than \$500, or both fine and imprisonment. [MCL 750.504]

2. Fines and Costs

When fines and costs are assessed by a magistrate, \$40 shall be assessed as state minimum costs and collected for each conviction of a simple misdemeanor, and \$45 shall be assessed as state minimum costs for a specified and serious misdemeanor. Of the costs assessed and collected, for each conviction and each guilty plea, state minimum costs shall be paid to the clerk of the district court and transmitted to the State of Michigan. [MCL 600.8381]

3. Deferred Judgment of Guilt

If an individual has not previously been convicted or received a juvenile adjudication for a violation of 436.1703 (Minor in Possession of Alcohol), and if the individual pleads guilty or offers a plea of admission in juvenile delinquency proceedings, the court may, without entering a judgment of guilt or determination in a juvenile delinquency, defer further proceedings and place the individual on probation. The individual must agree to the deferment. If the individual is currently under a deferred judgment of guilt, or has

previously received a deferred judgment of guilt and a dismissal, he or she is not eligible for a second deferment.

The terms of probation may include, but are not limited to, a fine, costs including minimum state costs, cost of probation oversight, participation in substance abuse prevention services, treatment, or rehabilitation, community service, and a substance abuse screening and assessment at his or her own expense.

The deferment shall be abstracted to the Secretary of State, followed by a dismissal or conviction abstract when the probationer is discharged.

4. Probation

In all prosecutions for misdemeanors, if the defendant has been found guilty upon verdict or plea, and if it appears to the satisfaction of the court that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer. [MCL 771.1]

a. Term of Probation

If the defendant is convicted for an offense cognizable by a magistrate, the period of probation shall not exceed 2 years. The magistrate may fix and determine the period and conditions of probation by order. The order, whether it is filed or entered is part of the record in the cause. The court may amend the order, in form or substance, at any time. [MCL 771.2]

b. Conditions

The sentence of probation shall include at a minimum the conditions specified in MCL 771.3(1) as appropriate. The minimum conditions are included on SCAO Approved form DC 243, Order of Probation. In addition to the Judgment of Sentence form, if the magistrate orders probation, the Order of Probation should also be completed. Other conditions can be ordered as follows:

- pay immediately or within the period of probation a fine imposed when placed on probation;
- pay costs pursuant to MCL 771.3(6);
- pay any assessment ordered by the court other than an assessment described in MCL 771.3(1)(f);
- engage in community service;

- agree to pay any restitution, assessment, fine, or cost, imposed by the court by wage assignment;
- participate in inpatient or outpatient drug treatment, mental health treatment, mental health or substance abuse counseling, community corrections program, or residential probation program; or
- be under house arrest or subject to electronic monitoring.

[MCL 771.3(2) and (4) through (8)]

When a person has been convicted of domestic violence, or when a prior conviction of domestic violence is included in a criminal history record, which meets the definition of domestic violence in US Code, Title 18, Section 922(g)(9), a condition of probation prohibiting the defendant from possessing, carrying, or purchasing a firearm or ammunition should be included.

Upon violation of a term or condition of probation or upon a finding that the person is on deferred sentence in another court, the court may enter an adjudication of guilt and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation the court shall discharge the individual and dismiss the proceedings, which shall be without adjudication of guilt and is not considered a conviction. There may be only one discharge or dismissal for an individual.

The court must report the subsequent discharge and dismissal or adjudication of guilt to the Department of State. The Department of State shall retain a nonpublic record of the discharge and dismissal. If a conviction is entered the record shall be public.

If the court orders conditions reasonably necessary for the protection of one or more named persons, the court or a law enforcement agency within the court's jurisdiction shall enter the order or amended order of probation into the law enforcement information network (LEIN). If the order is rescinded or amended, the order in the LEIN shall be amended or removed accordingly. [MCL 771.3(2)(o) and (4)]

The court may impose other lawful conditions of probation as the circumstances of the case require or warrant, or as in its judgment are proper. If the court requires the probationer to pay costs, the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer. [MCL 771.3(5)]

c. Costs

If the court imposes costs as part of a sentence of probation, all of the following apply:

- The court shall not require a probationer to pay costs unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the probationer and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.
- A probationer who is required to pay costs and who is not in willful default of the payment of the costs, at any time, may petition the sentencing judge or his or her successor for a remission of the payment of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.
- If a probationer is required to pay costs as part of a sentence of probation, the court may require payment to be made immediately or the court may provide for payment to be made within a specified period of time or in specified installments.
- If a probationer is ordered to pay costs as part of a sentence of probation, compliance with that order shall be a condition of probation. The court may revoke probation if the probationer fails to comply with the order and if the probationer has not made a good faith effort to comply with the order. The magistrate does not have the authority to revoke probation.

[MCL 771.3(6)-(8)]

C. Traffic Misdemeanor Sanctions

Violations of the Michigan Vehicle Code (MVC) or local ordinances corresponding to it may be penalized by criminal, civil, and licensing sanctions, depending on the nature of the offense. Misdemeanor violations of the MVC are penalized by the criminal sanctions of imprisonment and/or a fine.

Some violations appear on the defendant's criminal record, and, in certain cases, on his or her driving record. Licensing sanctions also apply to misdemeanor violations. Different penalty provisions may apply for traffic offenses defined in local ordinances. Consult these ordinances for the applicable penalties. (See Michigan Judicial Institute's Traffic Benchbook Volume One - The Offenses, page 97 through 205 for a list of offenses.)

1. Imprisonment, Fines, and Costs

a. Michigan Vehicle Code

MCL 257.901 through MCL 257.909 contain the general penalty provisions for traffic misdemeanors and civil infractions. These penalties apply unless a different penalty is expressly provided for a particular offense. [MCL 257.901(2)] Different penalty provisions may apply for traffic offenses defined in local ordinances.

Consults these ordinances for the applicable penalties. Unless a different penalty is provided, the general penalty provision for misdemeanor traffic offenses is a maximum 90 day jail term and/or a maximum \$100 fine. [MCL 257.901(2)]

b. Penal Code

If the criminal sanction is not otherwise fixed by statute, a person convicted of a crime declared by any act of the state of Michigan to be a misdemeanor the penalty is imprisonment in the county jail for not more than 90 days or by a fine of not more than \$100, or both fine and imprisonment. [MCL 750.504]

c. Fines and Costs

When fines and costs are assessed by a magistrate, a traffic bureau, or a judge of the district court, \$40 shall be assessed as state minimum costs and collected for each conviction of a simple misdemeanor, and \$45 shall be assessed as state minimum costs for a specified and serious misdemeanor. Of the costs assessed and collected, for each conviction and each guilty plea, state minimum costs shall be paid to the clerk of the district court and transmitted to the State of Michigan. [MCL 600.8381]

The court shall waive the fine and costs for a violation of no license in possession on receipt of certification by a law enforcement agency that the defendant, before the appearance date on the citation, has produced his or her license and that it was valid on the date the violation occurred. [MCL 257.901a]

d. Substance Abuse Screening, Assessment, and Community Service

Convictions of certain alcohol related offenses allow the court to order the defendant to undergo substance abuse screening and assessment and to perform community service, and to receive a restricted driver license to drive to and from an alcohol or drug education or treatment programs. The defendant shall pay for the costs of screening, assessment, and rehabilitative programs. [MCL 257.624a(3) and MCL 257.624b(1)]

2. Impoundment for Driving while License Suspended, Revoked, Denied

- a. When a person is convicted of operating a motor vehicle while license suspended, revoked, or denied or who has never applied for a license under MCL 257.904(1) and (2), if the motor vehicle is owned in whole or in part by that person, it shall be ordered impounded for not more than 120 days from the date of the judgment. [MCL 257.904b(1)]
- b. The court must include in the order the place the motor vehicle will be held and the specific time by which the defendant must deliver the motor vehicle. (SCAO Approved form DC 254)
- c. The order of impoundment is valid throughout the state and can be executed by any peace officer. The order shall include the implied consent of the owner of the vehicle to the storage for insurance coverage purposes. [MCL 257.904b(2)]
- d. The owner of the vehicle is liable for expenses incurred in the removal and storage of the vehicle whether or not the vehicle is returned to the owner. The vehicle shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the vehicle is not returned within 30 days after the time set for return in the order for impoundment, the vehicle shall be considered abandoned and disposed of as provided in MCL 257.252a. [MCL 257.904b(3) and (4)]

3. Vehicle Immobilization

- a. When a person is convicted under MCL 257.904(10) through (12) within the past 7 years (operating a motor vehicle while license or registration certificate is suspended or revoked and who has been notified of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, if the motor vehicle is owned in whole or in part by that person, the court may order vehicle immobilization for not more than 180 days; or for any combination of 2 or 3 prior suspensions, revocations, or denials under MCL 257.904(10) through (12) within the past 7 years, the court shall order vehicle immobilization for not less than 90 days or more than 180 days; or for any combination of 4 or more prior suspensions, revocations, or denials under MCL 257.904(10) through (12) within the past 7 years, the court shall order vehicle immobilization for not less than 1 year or more than 3 years.
- b. The defendant shall provide to the court the vehicle identification number and registration plate number of the vehicle involved in the violation.

- c. The order of immobilization shall not be suspended. If the defendant is ordered imprisoned for the violation for which immobilization is ordered, the period of immobilization begins at the end of the period of imprisonment. is valid throughout the state and can be executed by any peace officer. [MCL 257.904d(6) and (7)]

4. Licensing Sanctions

Licensing sanctions for violations of the MVC may involve suspension, revocation, or restriction of the defendant's driver's license. Such sanctions are imposed by the Secretary of State.

Defendants who fail to pay the fine for a traffic offense are subject to license suspension and other sanctions. [MCL 257.204b]

5. Types of Sanctions

a. Points

The misdemeanor conviction is entered on defendant's driving record and points assessed according to the schedule prescribed by statute. Assessing points is a mandatory function of the Secretary of State; it is **not** a function of the court. [MCL 257.320a]

In assessing points, the Secretary of State has interpreted all other moving violations to include many misdemeanor offenses. It also includes both attempted misdemeanor convictions and conviction for attempt to commit a felony when the attempt itself is a misdemeanor. [MCL 257.320a(1)(n)]

b. License Suspension

- 1) Persons convicted of certain misdemeanor traffic offenses receive a mandatory license suspension. [MCL 257.319] A suspension under this section of the statute is imposed by the Secretary of State based on a predetermined the length of suspension within the time periods required by statute.
- 2) Misdemeanor traffic offenses resulting in attempted convictions receive the same licensing suspension as the completed offense. [MCL 257.204b]
- 3) If the Secretary of State received records of more than one conviction or disposition for a person resulting from the same incident, a suspension shall be

imposed only for the violation to which the longest period of suspension applies under this section. [MCL 257.319(10)]

- 4) The Secretary of State may suspend or revoke the license of a resident of this state upon receiving notice of the conviction or determination of responsibility of that person in an administrative adjudication in another state for a violation in that state which, if committed in this state, would be grounds for the suspension or revocation of the license. [MCL 257.318]
- 5) The Secretary of State may suspend or revoke the right of a nonresident to operate a motor vehicle in this state for the same reasons the license of a resident driver may be suspended or revoked. [MCL 257.317]

c. License Revocation

Convictions of certain misdemeanor traffic offenses result in license revocation, e.g., combinations of misdemeanor drunk driving convictions and reckless driving convictions within certain time periods. [MCL 257.303(2)]

5. Abstract of Conviction

- a. All convictions arising from violations of the MVC or a local ordinance corresponding to the MVC must be abstracted except nonmoving violations that are not the basis for the Secretary of State's suspension, revocation, or denial of a driver's license. [MCL 257.732(1) and (15)]
- b. The court clerk is responsible for abstracting such judgments electronically (or Secretary of State form DS-1-22). The abstract must be certified by signature, stamp, or facsimile signature to be true and correct. [MCL 257.732(2)] The abstract must include all of the following:
 - name, address, and date of birth of the person charged or cited;
 - license number, if any;
 - date and nature of the violation;
 - type of vehicle driven at the time of the violation;
 - date of conviction, finding, forfeiture, judgment, or determination;
 - whether bail was forfeited;
 - any license revocation, restriction, suspension, or denial ordered by the court; and
 - other information considered necessary to the Secretary of State.

6. Sanctions Imposed by Secretary of State

With some exceptions, traffic misdemeanor convictions must be reported to the Secretary of State within 14 days after conviction, forfeiture of bail, or entry of default judgment. [MCL 257.732(2)]

The Secretary of State enters the misdemeanor conviction on the defendant's driving record, and assesses points based on the schedule in MCL 257.320a. Accumulation of excessive points on a defendant's driving record may result in licensing sanctions imposed by the Secretary of State. [MCL 257.320] Assessing points is not the court's function; only the Secretary of State may perform this duty. For a chart explaining the point assessment for speed violations, see "Michigan's New Speed Law" in the Appendix of Section 6 on Civil Traffic.

7. Court-Imposed Licensing Sanctions

Imposition of licensing sanctions is the responsibility of the Secretary of State; however, the court is also permitted or required to impose licensing sanctions occurring before October 1, 1999 for criminal offenses under MCL 257.624a, MCL 257.624b, MCL 257.328, and MCL 436.1703. For such offenses, the court orders the Secretary of State to impose the licensing sanction in a notation on the abstract of conviction. The magistrate can only order licensing sanctions for some 90 day misdemeanors within his or her sentencing authority under MCL 600.8511(b), but should nonetheless be aware of all the criminal offenses involving court-imposed licensing sanctions for purposes of advising defendants at arraignment of the effect of a plea or conviction.

5.2.9 Misdemeanor Appeals

A. Appeal from Decision of Magistrate

Appeals of right may be taken from a decision of the magistrate to the district judge in the district in which the magistrate serves by filing a written claim of appeal in substantially the form provided by MCR 7.101(D) within seven days of the entry of the decision of the magistrate. No fee is required on the filing and action is heard de novo by the district court. [MCR 4.401(D)]

B. Challenging Plea

The following provisions apply where a defendant seeks to challenge the plea.

1. A defendant may not challenge a plea on appeal unless the defendant moved in the trial court to withdraw the plea for noncompliance with the Michigan Court Rules. Such a motion may be made either before or after sentence has been imposed. [MCR 6.610(E)(7)(a)]
2. If the trial court determines that a deviation affecting substantial rights occurred, it shall correct the deviation and give the defendant the option of permitting the plea to stand or of withdrawing the plea. If the trial court determines either a deviation did not occur, or that the deviation did not affect substantial rights, it may permit the defendant to withdraw the plea only if it does not cause substantial prejudice to the people because of reliance on the plea. [MCR 6.610(E)(7)(b)]
3. If a deviation is corrected, any appeal will be on the whole record including the subsequent advice and inquiries. [MCR 6.610(E)(7)(c)]

5.2.10 Non-Compliance with Judgment of Sentence, Traffic Misdemeanor**A. Offenses Other than Alcohol and Drug Offenses**

If a defendant fails to comply with an order of judgment of the court, including, but not limited to, paying all fines, costs, fees, and assessments, the court shall proceed as required under MCL 257.321a.(2).

1. 28 days or more after the date of noncompliance with an order or judgment, the court shall give notice by mail at the last known address of the person.
2. The notice shall indicate that if the person fails to comply with the order or judgment, including, but not limited to, paying all fines and costs, within 14 days after the notice is issued, the Secretary of State shall suspend the person's operator's or chauffeur's license. (SCAO Approved form MC 216)
3. If the person fails to comply with the order including, but not limited to paying all fines and costs, within the 14 day period, the court shall inform the Secretary of State within 14 days.
4. Upon being informed by the court, the Secretary of State shall immediately suspend the license of the person and notify the person of the suspension by regular mail at the person's last known address.

[MCL 257.321a(2)]

B. Alcohol Offenses

If the person is charged with, or convicted, of a violation of MCL 257.624a or MCL 257.624b or MCL 436.1703 or MCL 257.625 or a local ordinance substantially corresponding to MCL 257.624a or MCL 257.624b or MCL 436.1703, or MCL 257.625(1), (2), (3), (6), or (8):

1. 28 days or more after the date of noncompliance with an order or judgment, the court shall give notice by mail at the last known address of the person.
2. the notice shall indicate that if the person fails to comply with the order or judgment, including, but not limited to, paying all fines, costs and crime victim rights assessments, within 14 days after the notice is issued, the Secretary of State shall suspend the person's operator's or chauffeur's license within 14 days after the notice is issued. (SCAO Approved form MC 216a)

3. if the person fails to comply with the order or judgment issued, including, but not limited to paying all fines, costs, and crime victim rights assessments within the 14-day period, the court shall immediately inform the Secretary of State within 14 days.
4. upon being informed by the court, the Secretary of State shall immediately suspend the person's operator's or chauffeur's license and notify the person of the suspension by first-class mail sent to the person's last known address.

[MCL 257.321a(3) and (4)]

C. Other Remedies

In addition to the above remedies for noncompliance with an order or judgment, the court has two other options available to encourage compliance:

1. issue an order to show cause why the defendant should not be held in contempt (SCAO Approved form MC 230). [MCR 3.606]
2. issue a bench warrant for the defendant's arrest (SCAO Approved form MC 229). [MCR 3.606]

D. Extension to Pay

A magistrate has discretion to give a person an extension of time to pay. Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown. [MCR 1.110] If additional time is given, the 28 day period in MCL 257.321a begins at the end of the extended period of time. In light of the 28 day period after failure to pay and the 14 day notice provision in the statute, the State Court Administrative Office recommends giving extensions only in cases of real, demonstrated hardship, and then only at the end of the 28 day period.

5.3.1 Checklist for Appearance in Person

- ☐ Identify Case
- ☐ Read the Complaint
- ☐ Advise Defendant of Rights
- ☐ Determine Plea
- ☐ Establish Factual Basis for Plea
- ☐ Accept Plea
- ☐ Impose Sentence
- ☐ Impose License Sanctions

5.3.2 Checklist for Appearance by Mail

- ☐ Examine Case File
- ☐ Order Bond
- ☐ Determine Mandatory Court Appearance/Waiver
- ☐ Notify Defendant in Writing
- ☐ Determine Adequacy of Plea
- ☐ Accept Plea
- ☐ Impose Sentence
- ☐ Impose License Sanctions

5.4 Forms

[DC 213 - Advice of Rights](#) ([foreign versions](#) available for Arabic, Chinese, Hmong, Korean, Spanish, and Russian)

[MC 216 - 14 Day Notice, Traffic](#)

[MC 216a - Notice of Noncompliance, Drinking/Driving Offense](#)

[DC 223 - Plea by Mail](#)

[DC 225 - Complaint and Warrant, Misdemeanor](#)

[DC 226 - Warrant, Misdemeanor](#)

UC-01a - Uniform Law Citation

[MC 219 - Judgment of Sentence/Commitment to Jail](#)

[MC 262 - Order of Acquittal/Dismissal or Remand](#)

[MC 263 - Motion/Order of Nolle Prosequi](#)

[DC 243 - Order of Probation](#)

[MC 270 - Order Regarding Extradition](#)

[MC 271 - Waiver of Extradition](#)

APPENDIX 5

Criminal Penalties/Administrative Sanctions

Criminal Sentencing/Administrative Consequences - Repeat Offender (Driving While Suspended Convictions)

| | DWLS §904(1) | Knowing Allowed Someone to DWLS §904(2) | DWLS Causing Death §904(4) | DWLS Causing Serious Injury §904(5) | Knowingly Allowed Someone to DWLS Causing Death §904(7) | Knowingly Allowed Someone to DWLS Causing Serious Injury §904(7) |
|---|---|--|--|--|--|--|
| 1st Offense (no *priors) | Misdemeanor Fine/Jail/Comm Svc: Up to 93 days jail; up to \$500 fine, or both. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: None. (Cancel upon notice by officer) Immob: None Reg Deny: None Forf: None | Misdemeanor Fine/Jail/Comm Svc: Up to 93 days jail; up to \$500 fine, or both. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: None. (Cancel upon notice by officer) Immob: None Reg Deny: None Forf: None | Felony Fine/Jail/Comm Svc: Prison up to 15 years; \$2,500 - \$10,000 fine, or both. Licensing: minimum 1 year revocation/denial Plate conf: Required Immob: Required up to 180 days, unless forfeited. Reg Deny: None Forf: Permissive | Felony Fine/Jail/Comm Svc: Prison up to 5 years; \$1,000 - \$5,000 fine, or both. Licensing: minimum 1 year revocation/denial Plate conf: Required Immob: Required up to 180 days, unless forfeited. Reg Deny: None Forf: Permissive | Felony Fine/Jail/Comm Svc: Prison up to 5 years; \$1,000 - \$5,000 fine, or both. Licensing: None Plate conf: None Immob: None Reg Deny: None Forf: None | Felony Fine/Jail/Comm Svc: Prison up to 2 years; \$1,000 - \$5,000 fine, or both. Licensing: None Plate conf: None Immob: None Reg Deny: None Forf: None |
| 2nd Offense or 1 * prior 904 susp within 7 years | Misdemeanor Fine/Jail/Comm Svc: Up to 1 year jail; up to \$1,000 fine, or both. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: None. (Cancel upon notice by officer) Immob: Permissive up to 180 days Reg Deny: None Forf: None | Misdemeanor Fine/Jail/Comm Svc: to 1 year jail; up to \$1,000 fine, or both. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: None. (Cancel upon notice by officer) Immob: Permissive up to 180 days Reg Deny: None Forf: None | Felony Fine/Jail/Comm Svc: Prison up to 15 years; \$2,500 - \$10,000 fine, or both. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: Required up to 180 days, unless forfeited. Reg Deny: None Forf: Permissive | Felony Fine/Jail/Comm Svc: Prison up to 5 years; \$1,000 - \$5,000 fine, or both. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: Required up to 180 days, unless forfeited. Reg Deny: None Forf: Permissive | Same as 1st offense. | Same as 1st offense. |
| 3rd Offense or 2 *prior 904 susp within 7 years | Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 90 to 180 days Reg Deny: None Forf: None | Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 90 to 180 days Reg Deny: None Forf: None | Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 90 to 180 days, unless forfeited. Reg Deny: None Forf: Permissive | Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 90 to 180 days, unless forfeited. Reg Deny: None Forf: Permissive | Same as 1st offense. | Same as 1st offense. |
| 4th Offense or 3 *prior 904 susp within 7 years | Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 90 to 180 days Reg Deny: Required Forf: None | Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 90 to 180 days Reg Deny: Required Forf: None | Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 90 to 180 days, unless forfeited. Reg Deny: Required Forf: Permissive | Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 90 to 180 days, unless forfeited. Reg Deny: Required Forf: Permissive | | |
| 5th Offense or 4 *prior 904 susp within 7 years | Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 1-3 years Reg Deny: Required Forf: None | Misdemeanor Criminal - Same. Licensing: Mandatory additional under §904(10), (11) and (12) Plate conf: Required Immob: 1-3 years Reg Deny: Required Forf: None | Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 1-3 years, unless forfeited. Reg Deny: Required Forf: Permissive | Felony Criminal - Same. Licensing: minimum 5 year revocation/denial Plate conf: Required Immob: 1-3 years, unless forfeited. Reg Deny: Required Forf: Permissive | | |

*For purposes of immobilization, priors are defined as prior mandatory additional suspensions/revocations imposed pursuant to §904(10), (11) or (12); not prior convictions of DWLS.